

**Laws and Resolutions**  
**OF THE**  
**STATE OF MONTANA**

**PASSED BY THE**  
**Forty-Third Legislature**  
**In Second Regular Session**

**Held at Helena, the Seat of Government**  
**Regular Session**  
**January 7, 1974 to March 16, 1974**

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**Compiled by Montana Legislative Council**

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# OFFICERS AND MEMBERS

## of the Forty-Third Legislative Assembly of the State of Montana 1974

THOMAS L. JUDGE, Governor

W. Gordon McOmber, President of the Senate  
P. J. Keenan, President Pro Tempore  
Harold E. Gerke, Speaker of the House  
Walter Laas, Speaker Pro Tempore

### SENATE

| NAME                       | RESIDENCE OR<br>MAILING ADDRESS                    | DIST.<br>NO. | COUNTY OF<br>RESIDENCE | POLITICS   |
|----------------------------|----------------------------------------------------|--------------|------------------------|------------|
| *Aber, L. M. (Larry)       | 228 3rd Ave. No., Columbus 59019                   | 7            | Stillwater             | Republican |
| Bennett, George T.         | P. O. Box 1166, Helena 59601                       | 12           | Lewis & Clark          | Republican |
| *Bertsche, Wm. H.          | 1917 4th Ave. No., Great Falls 59401               | 13           | Cascade                | Democrat   |
| *Bollinger, Gordon E.      | 217 Klein Ave., Glasgow 59230                      | 4            | Valley                 | Democrat   |
| *Boylan, Paul F.           | Star Route, Bozeman 59715                          | 11           | Gallatin               | Democrat   |
| *Breeden, J. W. "Brick"    | 1202 South Willson, Bozeman 59715                  | 11           | Gallatin               | Republican |
| Broder, Fred O.            | Route 4, Kalispell 59901                           | 16           | Flathead               | Republican |
| *Carl, Fred G.             | P.O. Box 477, Missoula 59801                       | 18           | Missoula               | Republican |
| Cochrane, Archie M.        | 2958 Upper Highway, Billings 59102                 | 8            | Yellowstone            | Republican |
| Darrow, George             | 2014 Beverly Hills Blvd.,<br>Billings 59102        | 8            | Yellowstone            | Republican |
| Deschamps, G. W. "Por"     | Route 2, Mullan Rd., Missoula 59801                | 18           | Missoula               | Republican |
| Devine, John W. (Jack)     | Box 1443, Great Falls 59401                        | 13           | Cascade                | Democrat   |
| DeWolfe, Percy             | Box 250, Browning 59517                            | 15           | Glacier                | Democrat   |
| Drake, Glen L.             | So. Annex, Power Block, Helena 59601               | 12           | Lewis & Clark          | Republican |
| *Flynn, Elmer              | Route 2, Mullan Rd., Missoula 59801                | 18           | Missoula               | Democrat   |
| *Gilfeather, P. J.         | 2816 4th Ave. So., Great Falls 59401               | 13           | Cascade                | Democrat   |
| Goodheart, B. J. "Swede"   | P.O. Box 1013, Malta 59538                         | 5            | Phillips               | Democrat   |
| Graham, Carroll A.         | Lodge Grass 59050                                  | 1            | Big Horn               | Democrat   |
| Hall, Mrs. John Nelson     | 212 12th St. No., Great Falls 59401                | 13           | Cascade                | Democrat   |
| *Harrison, James T., Jr.   | 1100 Chateau, Helena 59601                         | 12           | Lewis & Clark          | Republican |
| *Hazelbaker, Frank W.      | Box 430, Dillon 59725                              | 21           | Beaverhead             | Republican |
| *Himsi, Matt               | 305 4th Ave. E., Kalispell 59901                   | 16           | Flathead               | Republican |
| James, David F.            | P.O. Box 221, Joplin 59531                         | 14           | Liberty                | Democrat   |
| *Jensen, Arthur N.         | P.O. Box 668, Superior 59872                       | 23           | Mineral                | Democrat   |
| Keenan, P. J.              | 1112 East Fifth, Anaconda 59711                    | 19           | Deer Lodge             | Democrat   |
| *Klindt, Herbert J.        | 402 Alderson Ave., Billings 59102                  | 8            | Yellowstone            | Republican |
| *Lowe, William r. "Bull"   | 1008 Poly Dr., Billings 59102                      | 8            | Yellowstone            | Republican |
| Lynch, Neil J.             | 2101 Harrison Ave., Butte 59701                    | 20           | Silver Bow             | Democrat   |
| McCallum, George           | Niarada 59852                                      | 23           | Sanders                | Republican |
| McDonald, John K. (Jack)   | Belt 59412                                         | 13           | Cascade                | Democrat   |
| *McGowan, Gordon           | Rural Route, Highwood 59450                        | 14           | Chouteau               | Democrat   |
| *McKeon, Luke              | 316 E. 7th, anaconda 59711                         | 19           | Deer Lodge             | Democrat   |
| McNamer, William R.        | P.O. Box 1383, Billings 59103                      | 8            | Yellowstone            | Republican |
| *McOmber, Gordon           | R.R. 2, Fairfield 59436                            | 15           | Teton                  | Democrat   |
| Manning, Dave              | Hvsham 59038                                       | 6            | Treasure               | Democrat   |
| Mathers, William L.        | P.O. Box 267, Miles City 59301                     | 2            | Custer                 | Republican |
| Moore, Jim                 | Two Dot 59085                                      | 9            | Wheatland              | Republican |
| Moritz, Earl               | 1024 W. Evelyn, Lewistown 59457                    | 10           | Fergus                 | Republican |
| Nees, Stanley              | 432 B Street West, Poplar 59255                    | 4            | Roosevelt              | Democrat   |
| Northey, Harry T.          | 514 Daly Ave., Missoula 59801                      | 18           | Missoula               | Republican |
| *Romney, Miles             | 425 South 3rd, Hamilton 59840                      | 22           | Ravalli                | Democrat   |
| *Rosell, antoinette Fraser | 4200 Rimrock Road, Billings 59102                  | 8            | Yellowstone            | Republican |
| *Shea, James R. "Jimmy"    | 604 West Daly St., Walkerville 59701               | 20           | Silver Bow             | Democrat   |
| *Siderius, George          | c/o Somer's Stage, Kalispell 59901                 | 16           | Flathead               | Democrat   |
| *Sorensen, C. F. (Smoky)   | *9 Brookwood Park, Rte. #1 So.,<br>Gt. Falls 59401 | 13           | Cascade                | Democrat   |
| Story, Peter R.            | Emigrant 59027                                     | 11           | Park                   | Republican |
| Thiessen, Cornie R.        | Box 195, Lambert 59243                             | 3            | Richland               | Democrat   |
| *Turnage, Jean A.          | P.O. Box 450, Polson 59860                         | 17           | Lake                   | Republican |
| *Vainio, Leonard E.        | 1701 Grand Ave., Butte 59701                       | 20           | Silver Bow             | Democrat   |
| *Zody, A. A.               | 503 So. Pearson, Glendive 59330                    | 3            | Dawson                 | Democrat   |

\*Term expires 1975; all other Senators four-year terms.

†(appointed to replace W. A. "Bill" Groff, resigned  
(term expires 1975)

1. Replaced Bennett, W. F., resigned Dec. 1972



# HOUSE OF REPRESENTATIVES

| NAME                       | RESIDENCE OR MAILING ADDRESS                       | DIST. NO. | COUNTY OF RESIDENCE | POLITICS   |
|----------------------------|----------------------------------------------------|-----------|---------------------|------------|
| Aageson, Dave              | Gildford 59525                                     | 14        | Hill                | Republican |
| Ainsworth, A. L. (Bud)     | 4111 Timberlane, Missoula 59801                    | 18        | Missoula            | Republican |
| Asbjornson, J. O. "Boots"  | P.O. Box 794, Winifred 59489                       | 10        | Fergus              | Republican |
| Baeth, William R. (Bill)   | 805 Minnesota Ave., Libby 59923                    | 23        | Lincoln             | Democrat   |
| Bardanoue, Francis         | Harlem 59526                                       | 5         | Blaine              | Democrat   |
| Barrett, Fred O.           | 259 SW Maple, Lewistown 59457                      | 10        | Fergus              | Republican |
| Baucus, Max S.             | 525 So. Fifth St. East, Missoula 59801             | 18        | Missoula            | Democrat   |
| Bell, John F.              | Birdseye, Helena 59601                             | 12        | Lewis & Clark       | Republican |
| Bennetts, Barbara K.       | 25 South Benton, Helena 59601                      | 12        | Lewis & Clark       | Democrat   |
| Bradley, Dorothy M.        | Box 114, Rt. 3, Bozeman 59715                      | 11        | Gallatin            | Democrat   |
| Brand, Joe                 | 800 Montana Ave., Deer Lodge 59722                 | 19        | Powell              | Democrat   |
| Brown, Robert J. (Bob)     | Route #1, Whitefish 59937                          | 16        | Flathead            | Republican |
| Burnett, James H. "Jim"    | Star Route, Luther 59051                           | 7         | Carbon              | Republican |
| Campbell, William C.       | 630 Flowerree, Helena 59601                        | 12        | Lewis & Clark       | Republican |
| Castles, Ruth B.           | York Route, Helena 59601                           | 12        | Lewis & Clark       | Republican |
| Clemow, Tom                | Box 828, Jackson 59736                             | 21        | Beaverhead          | Republican |
| Colberg, Richard A.        | 631 Terry Ave., Billings 59102                     | 8         | Yellowstone         | Democrat   |
| Cotton, Robert S.          | S.W. Glasgow, Glasgow 59230                        | 5         | Valley              | Democrat   |
| Cox, Henry S. "Hank"       | 1904 St. John's, Billings 59102                    | 8         | Yellowstone         | Republican |
| Driscoll, John B.          | 424 S. 2nd St., Hamilton 59840                     | 22        | Ravalli             | Democrat   |
| East, Vic                  | Box 83, Forsyth 59327                              | 6         | Rosebud             | Republican |
| Edland, Wallace B.         | Box 98, Scobey 59263                               | 4         | Daniels             | Democrat   |
| Eller, Robert A.           | 2206 Bridger Dr., Bozeman 59715                    | 11        | Gallatin            | Republican |
| Fagg, Harrison G.          | 1414 Mystic Dr., Billings 59102                    | 8         | Yellowstone         | Republican |
| Fasbender, Larry           | Fourte 1, Box 23, Fort Shaw 59443                  | 13        | Cascade             | Democrat   |
| Fleming, James F., Jr.     | Box 116, Pablo 59855                               | 17        | Lake                | Democrat   |
| Flynn, James W.            | P.O. Box 524, Dillon 59725                         | 21        | Beaverhead          | Democrat   |
| Forsgren, Wallace O.       | Box 225, Bozeman 59715                             | 11        | Gallatin            | Republican |
| Galt, Jack E.              | Martinsdale 59053                                  | 9         | Meagher             | Republican |
| Gerke, Harold E.           | 202 Mountain View Blvd., Billings 59101            | 8         | Yellowstone         | Democrat   |
| Glennen, Robert E.         | #7 Prairieview Drive, Casa Village, Billings 59102 | 8         | Yellowstone         | Republican |
| Greely, Michael T.         | 409 Strain Bldg., Great Falls 59401                | 13        | Cascade             | Democrat   |
| Gunderson, Jack            | P.O. Box 187, Power 59468                          | 13        | Cascade             | Democrat   |
| Hageman, Alvin             | Stillwater Co. Rural Rte., Broadview 59015         | 7         | Stillwater          | Democrat   |
| Hager, Tom                 | 1540 Elaine St., Billings 59101                    | 8         | Yellowstone         | Republican |
| Haines, Tom                | 15 Martha's Crt., Missoula 59801                   | 18        | Missoula            | Republican |
| Hall, John C.              | 1020 Third Ave. No., Great Falls 59401             | 13        | Cascade             | Democrat   |
| Halvorson, Ora J.          | 244 Woodland Ave., Kalispell 59901                 | 16        | Flathead            | Democrat   |
| Harper, Hal                | 509 Logan, Helena 59601                            | 12        | Lewis & Clark       | Republican |
| Harper, Robert J. "Bob"    | 68 Missoula Ave., Butte 59701                      | 20        | Silver Bow          | Democrat   |
| Healy, John E. (Jack)      | 624 West Granite, Butte 59701                      | 20        | Silver Bow          | Democrat   |
| Hodges, William C.         | 106 25th St. No., Great Falls 59401                | 13        | Cascade             | Democrat   |
| Holmes, Mrs. Polly         | 1620 Ave. F., Billings 59102                       | 8         | Yellowstone         | Democrat   |
| Holtz, Malcolm E.          | 2625 4th Ave. No., Great Falls 59401               | 13        | Cascade             | Republican |
| Hubing, Lee                | Terry 59349                                        | 6         | Prairie             | Republican |
| Huennekens, Herb           | 3216 Rimrock Rd., Billings 59102                   | 8         | Yellowstone         | Democrat   |
| Jacobsen, Glenn            | Reserve 59258                                      | 4         | Sheridan            | Democrat   |
| Johnston, George R.        | 504 3rd St. S.E., Cut Bank 59427                   | 15        | Glacier             | Democrat   |
| Jones, Tom L. <sup>2</sup> | 31 Second St. East, Kalispell 59901                | 16        | Flathead            | Republican |
| Kendall, Orin P.           | P.O. Box 563, Thompson Falls 59873                 | 23        | Sanders             | Democrat   |
| Kessner, Jack E.           | 154 Riverview C., Great Falls 59404                | 13        | Cascade             | Republican |
| Kimble, Gary               | 640 S. 6th E., Missoula 59801                      | 18        | Missoula            | Democrat   |
| Kolstad, Allen C.          | Chester 59522                                      | 14        | Liberty             | Republican |
| Kosena, Albert E. (Al)     | 106 No. Main, Anaconda 59711                       | 19        | Deer Lodge          | Democrat   |
| Kvaalen, Oscar S.          | Lambert 59243                                      | 3         | Richland            | Republican |
| Laas, Walter               | Chester 59522                                      | 14        | Liberty             | Democrat   |
| Lee, Robert E. (Bob)       | 1945 Florida, Butte 59701                          | 20        | Silver Bow          | Democrat   |
| Lien, Orphey "Bud"         | P.O. Box 666, Poplar 59255                         | 4         | Roosevelt           | Democrat   |
| Lockrem, Lloyd C., Jr.     | 3109 Edmond St., Billings 59102                    | 8         | Yellowstone         | Republican |
| Lombardi, Jerry V.         | 947 Waukesha, Butte 59701                          | 20        | Silver Bow          | Democrat   |
| Lucas, James P.            | 1920 Sudlow, Miles City 59301                      | 2         | Custer              | Republican |
| Lund, Art                  | Box 806, Scobey 59263                              | 4         | Daniels             | Republican |
| Lundgren, Conrad F.        | 844 Woodland, Kalispell 59901                      | 16        | Flathead            | Republican |
| Lynch, John "J.D."         | 527 W. Mercury, Butte 59701                        | 20        | Silver Bow          | Democrat   |
| McKittrick, Pat            | 4039 Ella Ave., Great Falls 59405                  | 13        | Cascade             | Democrat   |
| + Mann, C. Thornton        | P.O. Box 75, Victor 59875                          | 22        | Ravalli             | Republican |
| Manuel, Rex                | Fairfield 59436                                    | 15        | Teton               | Democrat   |
| Marbut, Gary R.            | Grant Creek, Missoula 59801                        | 18        | Missoula            | Republican |
| Marks, Robert L. (Bob)     | Clancy 59634                                       | 12        | Jefferson           | Republican |
| Mehrens, John "Sandy"      | 206 Evergreen, Anaconda 59711                      | 19        | Deer Lodge          | Democrat   |
| Menahan, William "Red"     | 1304 West Fifth, Anaconda 59711                    | 19        | Deer Lodge          | Democrat   |
| Mercer, Wallace W. (Wally) | Box 1556, Billings 59102                           | 8         | Yellowstone         | Republican |
| Murphy, John               | Box 40, Stanford 59479                             | 14        | Judith Basin        | Democrat   |
| Norman, Bill               | 440 Connell, Missoula 59801                        | 18        | Missoula            | Democrat   |
| Olson, S. A.               | Glendive Med. Cent., Glendive 59330                | 3         | Dawson              | Republican |
| Prevost, Robert C.         | Lambert 59243                                      | 3         | Richland            | Democrat   |
| Quilici, Joe               | 3040 Kossuth, Butte 59701                          | 20        | Silver Bow          | Democrat   |

# HOUSE OF REPRESENTATIVES—(Continued)

|                              |                                            |    |                    |            |
|------------------------------|--------------------------------------------|----|--------------------|------------|
| Regan, Ann K. "Pat" .....    | 204 Mountain View, Billings 59101 .....    | 8  | Yellowstone .....  | Democrat   |
| *Roberts, Joe R. ....        | c/o Law School, Univ. of Montana           |    |                    |            |
|                              | Missoula, Montana 59601 .....              | 23 | Lincoln .....      | Democrat   |
| Rolfe, Tom .....             | 1219½ West Koch, Bozeman 59715 .....       | 11 | Gallatin .....     | Republican |
| Schepens, Henry J. ....      | P.O. Box 591, Sidney 59270 .....           | 3  | Richland .....     | Democrat   |
| Schye, Elmer .....           | P.O. Box 504 .....                         |    |                    |            |
|                              | White Sulphur Springs 59643 .....          | 9  | Mengher .....      | Republican |
| Seifert, Carl A. ....        | Box 90, Polson 59860 .....                 | 17 | Lake .....         | Republican |
| Selstad, Tom .....           | 133 29th Ave. NW, Great Falls 59404 .....  | 13 | Cascade .....      | Republican |
| Shelden, Arthur H. ....      | Rt. 1, Box 1650, Libby 59923 .....         | 23 | Lincoln .....      | Democrat   |
| Smith, Carl M. ....          | Olive 59343 .....                          | 1  | Powder River ..... | Republican |
| Staigmiller, John B. ....    | P.O. Box 422, Cascade 59421 .....          | 13 | Cascade .....      | Democrat   |
| Stephens, Robert E. ....     | P.O. Box 218, Dutton 59433 .....           | 15 | Teton .....        | Democrat   |
| Stoltz, Gail .....           | Valier 59486 .....                         | 15 | Pondera .....      | Democrat   |
| Swanberg, Gorham E. ....     | P.O. Box 2567, Great Falls 59403 .....     | 13 | Cascade .....      | Democrat   |
| Tierney, John F. ....        | Eden Route, Great Falls 59401 .....        | 13 | Cascade .....      | Republican |
| Towe, Thomas E. ....         | 2640 Burlington Ave., Billings 59102 ..... | 8  | Yellowstone .....  | Democrat   |
| Turman, George .....         | 1525 Gerald ave., Missoula 59801 .....     | 18 | Missoula .....     | Republican |
| Turner, Clyde A. ....        | 920 Kalispell Ave., Whitefish 59937 .....  | 16 | Flathead .....     | Republican |
| Ulmer, Walter J. ....        | 121 So. Merriam, Miles City 59301 .....    | 2  | Custer .....       | Republican |
| Walborn, John E. ....        | P.O. Box 451, Hardin 59034 .....           | 1  | Big Horn .....     | Republican |
| Warfield, Bill .....         | Hoffman Route, Livingston 59047 .....      | 11 | Park .....         | Republican |
| Watt, Robert D. ....         | 451 Kensington Ave., Missoula 59801 .....  | 18 | Missoula .....     | Democrat   |
| Yardley, Dan .....           | P.O. Box 482, Livingston 59047 .....       | 11 | Park .....         | Democrat   |
| Zimmer, William (Bill) ..... | P.O. Box 67, Olney 59927 .....             | 16 | Flathead .....     | Democrat   |

2. Replaced Himsl, Matt, resigned

\*appointed to replace Norris Nichols, resigned

(term expires 1975)

\*\*Address change—(Joe R. Roberts) (temporary until January 1974) (home address—920 Main St., Libby 59923)

Compiled and Published from the official files of Frank Murray, Secretary of State, Helena, Montana.

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## HOUSE AND SENATE BILLS

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| 2             |                | 299           | An Act amending Section 11-1914, R.C.M. 1947, to authorize the investment of fire department relief association funds in time or savings deposits in banks, building and loan associations and savings and loan associations. ....Page 1                                                                                                                                                                                                                                                                                                                                                      |
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| 14            | 300            |               | An Act amending Section 79-301, 79-302 and 79-306, R.C.M. 1947, relating to the deposit of public moneys. ....Page 14                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
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| Chap.<br>Num. | Senate<br>Bill | House<br>Bill | Title                                                                                                                                                                                                                                                                                                                                                                                                                                       |
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# **SESSION LAWS**

**ENACTED BY THE**

**Forty-third Legislature**

**in Second Regular**

**Session**

**STATE OF MONTANA**

**1974**

**EXPLANATORY NOTE:**

Portions of statutes included herein are printed in *ITALICS* by virtue of Section 43-711.3, R.C.M., 1947. They are thus printed to make instantly recognizable the new part of existing statutes as added or changed by the Forty-Third Legislature, in Second Regular Session.



# SESSION LAWS

## CHAPTER NO. 1

AN ACT AMENDING SECTION 11-1829, R.C.M. 1947, TO AUTHORIZE THE INVESTMENT OF POLICE RETIREMENT FUND MONEY IN TIME OR SAVINGS DEPOSITS IN BANKS, BUILDING AND LOAN ASSOCIATIONS AND SAVINGS AND LOAN ASSOCIATIONS.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 11-1829, R.C.M. 1947, is amended to read as follows:

**"11-1829. Trustees' duties — auditing of fund — investment — report on retirement of policemen.** The board of trustees of said fund, shall audit the same from time to time at least twice during each year, and report the condition of said fund annually to the city or town council on or before the first day of April of each year. And the said board of trustees, shall invest the money in said fund from time to time as may be directed by the city or town council. The money of said fund shall be invested only in bonds of the United States or of the state of Montana, or bonds or warrants of the city or town, in which said fund exists, which are general liabilities of the whole city or town, or in certificates of deposit issued by any state or national bank, *building and loan association or savings and loan association* operating in the county where the city or town is located in Montana. And said trustees shall make sale of such bonds, securities, or certificates when desirable and as directed by the city or town council. All such bonds, warrants, and certificates shall be deemed part of the said fund and shall be kept in the possession of the city or town treasurer, and the treasurer shall be responsible therefor in the same manner as he is for all other moneys or funds of the city or town. Before any member of the police department is placed on the reserve list by the city council, the said board of trustees of said fund shall report to the city council in writing their recommendations as to whether or not such member shall be placed upon said reserve list."

Approved January 23, 1974

## CHAPTER NO. 2

AN ACT AMENDING SECTION 11-1914, R.C.M. 1947, TO AUTHORIZE

THE INVESTMENT OF FIRE DEPARTMENT RELIEF ASSOCIATION FUNDS IN TIME OR SAVINGS DEPOSITS IN BANKS, BUILDING AND LOAN ASSOCIATIONS AND SAVINGS AND LOAN ASSOCIATIONS.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 11-1914, R.C.M. 1947, is amended to read as follows:

**"11-1914. Duties of trustees—investment of surplus funds.** The board of trustees of said fire department relief association shall audit the account of the association at least every six (6) months and shall report the condition thereof at the next regular meeting of said association. The general management of the association shall be vested in the board of trustees. When so directed by a majority vote of the members of the association, the board of trustees shall have the power to invest the surplus funds of the association or any part thereof, in any time or saving deposits, *in any solvent bank, building and loan association or savings and loan association operating in the county where the city or town is located*, in bonds or other securities of the United States government, in general obligation bonds or warrants of any state, county or city as are recommended by the state auditor and approved by the state examiner. At the time of purchase such investments must be stamped in boldface type, substantially as follows: "Property of the .... Fire Department Relief Association, and negotiable only upon the order of the board of trustees of such association."

Approved January 23, 1974

## CHAPTER NO. 3

AN ACT AMENDING SECTION 23-3005, R.C.M. 1947, PERMITTING THE USE OF SOCIAL SECURITY NUMBERS AS REGISTRY NUMBERS.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 23-3005, R.C.M. 1947, is amended to read as follows:

**"23-3005. Hours of registration—registration cards.** (1) The registrar's office shall be open for voter registration from 8 a. m. until 5 p. m. on all regular working days except legal holidays as defined by section 19-107 except that the registrar's office shall be kept open on election day during the hours when the polls are open.

(2) Registration cards shall be numbered consecutively in order of receipt *through the close of registration prior to the 1974 general election;*

*thereafter, registration cards may, at the discretion of the county clerk and recorder, be numbered with the elector's social security number, and such number shall be the registry number.*

(3) The registrar shall classify registration cards by precinct and arrange the cards for each precinct in alphabetical order.

(4) The cards for each precinct shall be kept in a separate file.

(5) Immediately after filling out a registration card, the registrar shall enter the information in the official register of the county in the proper precinct."

Approved January 28, 1974

## CHAPTER NO. 4

AN ACT AUTHORIZING THE ATTORNEY GENERAL TO PROSECUTE PUBLIC OFFENSES DISCLOSED BY AUDITS OF THE LEGISLATIVE AUDITOR; AND TO PROVIDE AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Attorney general shall prosecute.** The attorney general shall conduct on behalf of the state, all prosecutions for public offenses disclosed by an audit of a state agency performed by the legislative auditor. If the attorney general shall decline such prosecution or shall fail to commence action on a public offense within a reasonable time the county attorney of the appropriate county shall conduct on behalf of the state such prosecution.

Section 2. This act is effective upon passage and approval.

Approved January 28, 1974

## CHAPTER NO. 5

AN ACT AMENDING SECTION 84-1501, R.C.M. 1947, RELATING TO THE CORPORATION LICENSE TAX BY SUBJECTING CORPORATIONS TO TAX ON THE BASIS OF TOTAL NET INCOME; PROVIDED, THAT CORPORATIONS HAVING INCOME FROM BUSINESS ACTIVITY WHICH IS TAXABLE BOTH WITHIN AND WITHOUT MONTANA SHALL BE TAXED ON THE BASIS OF NET INCOME DERIVED FROM OR ATTRIBUTABLE TO MONTANA SOURCES; AND AMENDING SECTION 84-1503, R.C.M. 1947, TO PROVIDE FOR THE ALLOCATION AND APPORTIONMENT OF INCOME OF CORPORATIONS HAVING INCOME FROM BUSINESS ACTIVITY WHICH IS TAXABLE BOTH WITHIN AND WITHOUT MONTANA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 84-1501, R.C.M. 1947, is amended to read as follows:

**"84-1501. Corporation license tax — organizations exempt therefrom — alternative tax based on gross sales.** The term corporation includes associations, joint-stock companies, common-law trusts and business trusts which do business in an organized capacity, *and all other corporations* whether created, *organized or existing* under and pursuant to the laws, agreements, or declarations of trust of *any state, country, or the United States*. Every corporation, except as hereinafter provided and except as provided in section 40-2821 (5), R.C.M. 1947, *engaged in business in the state of Montana shall annually pay to the state treasurer as a license fee for the privilege of carrying on business in this state such percentage or percentages of its total net income for the preceding year at the rate hereinafter set forth. In the case of corporations having income from business activity which is taxable both within and without this state, the license fee shall be measured by the net income derived from or attributable to Montana sources as determined under section 84-1503.*

The percentage of net income to be paid under this section shall be six and three-quarters per cent (6  $\frac{3}{4}$ %) of all net income for the taxable period. The rate set forth in this act shall be effective for all taxable years ending on or after February 28, 1971. *This rate is retroactive to and effective for all taxable years ending on or after February 28, 1971.* Every corporation subject to taxation under this act shall, in any event, pay a minimum tax of not less than fifty dollars (\$50).

Pursuant to the provisions of article III, section 2, of the Multistate Tax Compact (title 84, chapter 67, R.C.M. 1947) every corporation deriving income from sources both within and without the state of Montana and required to file a return and whose only activity in Montana consists of making sales and which does not own or rent real estate or tangible personal property within Montana and whose annual gross volume of sales made in Montana during the taxable year does not exceed one hundred thousand dollars (\$100,000), may elect to pay a tax of one-half of one percent (0.5%) of gross sales made in Montana during the taxable year. Such tax shall be in lieu of the tax otherwise imposed under this section. The gross volume of sales made in Montana during the taxable year shall be determined according to the provisions of article IV, sections 16 and 17, of the Multistate Tax Compact.

There shall not be taxed under this title any income received by any

- (a). Labor, agricultural or horticultural organization;
- (b). Fraternal beneficiary, society, order or association operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and providing for the payment of life, sick, accident or other benefits to the members of such society, order or association or their dependents;

(c). Cemetery company owned and operated exclusively for the benefit of its members;

(d). Corporation or association organized and operated exclusively for religious, charitable, scientific or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual;

(e). Business league, chamber of commerce, or board of trade, not organized for profit, and no part of the net income of which inures to the benefit of any private stockholder or individual;

(f). Civic league or organization not organized for profit, but operated exclusively for the promotion of social welfare;

(g). Club organized and operated exclusively for pleasure, recreation and other nonprofitable purposes, no part of the net income of which inures to the benefit of any private stockholder or members;

(h). Farmers' or other mutual hail, cyclone or fire insurance company, mutual ditch or irrigation company, mutual or co-operative telephone company, or like organization of a purely local character, the income of which consists solely of assessments, dues and fees collected from members for the sole purpose of meeting its expenses;

(i). Any co-operative association or corporation engaged in the business of operating a rural electrification system or systems for the transmission or distribution of electrical energy on a co-operative basis;

(j). Corporations or associations organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt from the tax imposed by this title;

(k). In determining the license fee to be paid under this act, there shall not be included any earnings derived from any public utility managed or operated by any subdivision of the state, or from the exercise of any governmental function."

Section 2. Section 84-1503, R.C.M. 1947, is amended to read as follows:

**"84-1503. Segregation of income within and without state.**

*(1) Any corporation having income from business activity which is taxable both within and without this state shall allocate and apportion its net income as provided in this section.*

*(a) A corporation engaged in a unitary business within and without Montana must apportion its business income as provided for under section 2, subsection 9 of this act. A business is unitary when the operation of the business within the state is dependent upon or contributory to the operation of the business outside the state or if the units of the business within and without the state are closely allied and not capable of separate maintenance as independent business.*

*(b) A corporation not engaged in a unitary business must allocate its*

*business income by means of separate accounting methods, provided its books and records are so kept that the income and expenses attributable to business operations within the state can be properly segregated from total income and expense. If the corporation's books and records do not permit such proper segregation, its business income must be apportioned according to the provisions of section 2, subsection 9 of this act.*

(2) *Definitions:*

(a) *"Business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.*

(b) *"Nonbusiness income" means all income other than business income.*

(c) *"Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.*

(d) *"Compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services.*

(e) *"Sales" means all gross receipts of the taxpayer not allocated under paragraphs 4 through 8 of this section.*

(f) *"State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.*

(3) *For the purposes of allocation and apportionment of income, a corporation is taxable in another state if:*

(a) *by reason of the corporation's business activities carried on in that state it is subjected to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax, or*

(b) *that state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not.*

(4) *Rents and royalties from real or tangible personal property, capital gains, interest, dividends or patent or copyright royalties, to the extent that they constitute nonbusiness income, shall be allocated as provided in paragraphs 5 through 8 of this section.*

(5) (a) *Net rents and royalties from real property located in this state are allocable to this state.*

(b) *Net rents and royalties from tangible personal property are allocable to this state:*

(i) *if and to the extent that the property is utilized in this state, or*

(ii) *in their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.*



*(c) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.*

*(6) (a) Capital gains and losses from sales of real property located in this state are allocable to this state.*

*(b) Capital gains and losses from sales of tangible personal property are allocable to this state if:*

*(i) the property had a situs in this state at the time of the sale, or*

*(ii) the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.*

*(c) Capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.*

*(7) Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state.*

*(8) (a) Patent and copyright royalties are allocable to this state:*

*(i) if and to the extent that the patent or copyright is utilized by the payer in this state, or*

*(ii) if and to the extent that the patent or copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.*

*(b) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state: If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.*

*(c) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.*

*(9) All business income shall be apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three (3).*

*(10) The property factor is a fraction, the numerator of which is the*

*average value of the taxpayer's real and tangible personal property owned or rented and used in this state in the production of business income during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used in the production of business income during the tax period.*

*(11) Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight (8) times the net annual rental rate. The net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.*

*(12) The average value of property shall be determined by averaging the values at the beginning and ending of the tax period, but the tax administrator may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property.*

*(13) The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the tax period by the taxpayer for compensation attributable to the production of business income, and the denominator of which is the total amount paid everywhere during the tax period for compensation attributable to the production of business income.*

*(14) Compensation is paid in this state if:*

- (a) the individual's service is performed entirely within the state; or*
- (b) the individual's service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state; or*
- (c) some of the service is performed in the state and*
  - (i) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the state, or*
  - (ii) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.*

*(15) The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax period, and the denominator of which is the total sales of the taxpayer everywhere during the tax period.*

*(16) Sales of tangible personal property are in this state if:*

- (a) the property is delivered or shipped to a purchaser, other than the United States government, within this state regardless of the f.o.b. point or other conditions of the sale; or*
- (b) the property is shipped from an office, store, warehouse, factory, or other place of storage in this state and*
  - (i) the purchaser is the United States government or*
  - (ii) the taxpayer is not taxable in the state of the purchaser.*

*(17) Sales, other than sales of tangible personal property, are in this state if:*

- (a) the income-producing activity is performed in this state; or*
- (b) the income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.*

*(18) If the allocation and apportionment provisions of this section do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the tax administrator may require, in respect to all or any part of the taxpayer's business activity, if reasonable:*

*(a) separate accounting, provided, the taxpayer's activities in this state are separate and distinct from its operations conducted outside this state and are not a part of a unitary business operation conducted within and without this state. For purposes of this section a "unitary business" is one in which the business conducted within the state is dependent upon or contributory to the business conducted outside this state or if the units of the business within and without this state are closely allied and not capable of separate maintenance as independent businesses;*

*(b) the exclusions of any one (1) or more of the factors;*

*(c) the inclusion of one (1) or more additional factors which will fairly represent the taxpayer's business activity in this state; or*

*(d) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.*

*(19) The department of revenue shall prescribe regulations to carry out this section and shall publish such regulations and amendments thereto."*

Section 3 This act shall apply to all taxable years on and after December 31, 1973, whether on a fiscal or calendar year basis.

Approved February 5, 1974

## CHAPTER NO. 6

AN ACT AMENDING SECTION 43-1002, R.C.M. 1947, AUTHORIZING ADDITIONAL TIME FOR PREPARATION OF FISCAL NOTES.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 43-1002, R.C.M. 1947, is amended to read as follows:

"43-1002. **Budget director to prepare note.** The state budget director, in co-operation with the agency or agencies affected by the bill, is responsible for the preparation of the fiscal note and shall return same

within six (6) days. *He may request additional time to complete a note, which extension must be submitted to the presiding officer or committee requesting the note for approval.*"

Approved February 5, 1974

## CHAPTER NO. 7

AN ACT REQUIRING EVERY STATUTE TO BEGIN WITH AN ENACTING CLAUSE AND PRESCRIBING THE FORM OF THAT CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Enacting clause, form required.** The enacting clause of every law shall be as follows: "Be it enacted by the Legislature of the State of Montana:".

Section 2 This act is effective on its passage and approval.

Approved February 5, 1974

## CHAPTER NO. 8

AN ACT TO AMEND SECTION 81-302, R.C.M. 1947, TO PROVIDE FOR THE CLASSIFICATION AND RECLASSIFICATION OF STATE LANDS.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 81-302, R.C.M. 1947, is amended to read as follows:

"81-302. **Classification — reclassification — records.** (1) *The state lands are classified as follows:*

- (a) *Class 1. Lands which are principally valuable for grazing purposes.*
  - (b) *Class 2. Lands which are principally valuable for the timber that is on them, or for the growing of timber or for watershed protection.*
  - (c) *Class 3. Lands which are principally valuable for the production of crops.*
  - (d) *Class 4. Lands which are principally valuable for uses other than grazing, crop production, timber production or watershed protection.*
- (2) *The classification or reclassification shall be so made as to place state land in the class which best accomplishes the powers and duties of the state board of land commissioners as specified in section 81-103.*

*When state lands are classified or reclassified in accordance with these duties and responsibilities, special attention shall be paid to the capability of the land to support an actual or proposed land use authorized by each classification. A capability inventory shall be made prior to changing the classification of state lands. Such inventory shall include, when appropriate to the classification, information on soils capability, vegetation, wildlife use, mineral characteristics, public use, aesthetic values, cultural values, surrounding land use and any other resource, zoning or planning information which is related to the classification. Should a parcel of state land in one class have other multiple use or resource values which are of such significance that they do not warrant classification for the value, the land shall, nevertheless, be managed insofar as is possible to maintain or enhance these multiple-use values.*

*(3) It is the duty of the department to classify or reclassify state lands so that no state land will be sold, leased or used under a different classification from that to which it actually belongs.*

*(4) All field books, plats, maps, and records of the department shall show the class to which each tract therein belongs, and whether it belongs to the public schools of the state or to a state institution or other entity according to the grant or instrument by which title to the land has passed to the state; they shall also show whether or not the coal or other minerals in the land are reserved by the United States; and shall contain any other information the department considers necessary."*

Approved February 7, 1974

## CHAPTER NO. 9

AN ACT TO REPEAL CHAPTER 1 OF THE LAWS OF 1973 RELATING TO LEGISLATIVE EMPLOYEE DUTIES AND SALARIES; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Chapter 1 of the laws of 1973, is repealed.

Section 2. This act is effective on its passage and approval.

Approved February 7, 1974

## CHAPTER NO. 10

AN ACT REMOVING THE REQUIREMENT THAT A TAXIDERMIST RECORD THE HUNTER'S LICENSE NUMBER AS SPECIMEN OF GAME IS MOUNTED; AND AMENDING SECTION 26-907, R.C.M. 1947.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 26-907, R.C.M. 1947, is amended to read as follows:

"26-907. **Taxidermist's license — fee — penalty for violations.** Any person who shall engage in, or who is at the present time engaged in conducting any taxidermist business, as the term is generally understood, or any person who conducts a business for the purpose of mounting, preserving or preparing any of the dead bodies of any birds, or animals, or any part thereof, mentioned in the game laws of this state, must first obtain from the state fish and game director a taxidermist's license and shall pay an annual license fee of fifteen dollars (\$15.00) therefor. Such person shall, keep a written record of all the articles of game, the kind and number of each, by whom owned, and the residence of owner, also of all the articles of game shipped, and to whom and where shipped. The above record shall be kept for at least a period of one (1) year and open to inspection by any state game warden at any reasonable time. Any person violating the provisions hereof shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished as provided by section 26-324. In all cases of conviction of violation of this act the license of the person convicted shall be revoked."

Approved February 8, 1974

## CHAPTER NO. 11

AN ACT AMENDING SECTION 43-1005, R.C.M. 1947, TO REMOVE CERTAIN LIMITATIONS ON THE RIGHT TO REQUEST A FISCAL NOTE ON A BILL.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 43-1005, R.C.M. 1947, is amended to read as follows:

"43-1005. **Note requested by committee or house.** A fiscal note also may be requested on a bill, *as the joint rules of the senate and the house of representatives may allow*, by:

- (1) A committee considering the bill, or
- (2) A majority of the members of the house in which the bill is to be considered, at the time of second reading; *or*
- (3) *The sponsor through the presiding officer.*"

Approved February 12, 1974

## CHAPTER NO. 12

AN ACT AMENDING SECTION 39-107, R.C.M. 1947, AND REPEALING SECTIONS 39-118 AND 39-119, R.C.M. 1947, TO DELETE THE

PROVISION FOR ACKNOWLEDGMENTS ON OATH OR AFFIRMATION OF A CREDIBLE WITNESS.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 39-107, R.C.M. 1947, is amended to read as follows:

"39-107. **Officer taking acknowledgment must know person —corporations.** The acknowledgment of an instrument must not be taken unless the officer taking it knows or has satisfactory evidence that the person making such acknowledgment is the individual who is described in and who executed the instrument; or, if executed by a corporation, that the person making such acknowledgment is the president, or vice-president, or secretary, or assistant secretary of such corporation, or other person duly authorized by resolution of such corporation, who executed it on its behalf."

Section 2. Sections 39-118 and 39-119, R.C.M. 1947, are repealed.

Approved February 12, 1974

## CHAPTER NO. 13

AN ACT PROVIDING A PROCEDURE PERMITTING A HANDWRITING EXPERT RESIDING AND HAVING HIS PLACE OF BUSINESS OUTSIDE THE COUNTY OR STATE TO EXAMINE THE SIGNATURES ON THE ORIGINAL COPY OF A WILL.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Petition by party requesting handwriting analysis.** In any proceeding involving the probate, either contested or uncontested, of a will, in which the signature of the testator or of any witness is an issue, any party to the proceeding may file with the court a verified petition requesting that the original will be delivered to a handwriting expert residing and having his place of business outside the state or outside the county, for an examination of any of the signatures on the will.

Section 2. **Court to determine necessity of procedure, qualifications of expert.** The court, upon notice and hearing, shall determine whether the procedure is justified by the circumstances of the case and whether the handwriting expert specified in the petition is a qualified professional handwriting expert.

Section 3. **Clerk to mail will — notice.** If the court grants the peti-

tion for delivery of the original will to a qualified handwriting expert residing and having his place of business outside the county or state, the clerk of court shall make at least two (2) photocopies of the original will, which photocopies shall remain in the custody of the clerk of court. The clerk shall mail the original will by registered mail, return receipt requested, to the handwriting expert specified in the order and shall give notice of the mailing by mailing copies of the order to each of the parties to the proceeding and to the handwriting expert.

**Section 4. Expert to return will to clerk.** Upon completion of his analysis, the handwriting expert shall return the original will to the clerk of court by registered mail, return receipt requested.

**Section 5. Disposition of written report.** Unless the court orders another disposition of the written report, the handwriting expert, upon completion of his analysis, shall mail his written report to the party who requested it.

**Section 6. Petitioner to pay all fees.** All fees and expenses arising from the procedure outlined in this act, including the cost of photocopying the will, the expense of all registered mailings and the handwriting expert's fee, shall be paid by the party requesting the handwriting analysis.

**Section 7. Report property of petitioner unless interested party shares fees.** Unless the court otherwise orders, the handwriting expert's written report shall be the sole and exclusive property of the party requesting it; provided however, that upon demand and the payment of his pro rata share of the fees and costs of the handwriting expert, as shall be determined by the court, any interested party may obtain a certified copy of the written report.

Approved February 12, 1974

## CHAPTER NO. 14

AN ACT AMENDING SECTION 79-301, 79-302 AND 79-306, R.C.M. 1947, RELATING TO THE DEPOSIT OF PUBLIC MONEYS.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 79-301, R.C.M. 1947, is amended to read as follows:

**"79-301. Deposit of funds in the hands of the state treasurer.** (1) *Under the direction of the board of investments, the state treasurer shall deposit public moneys in his possession and under his control in solvent banks, building and loan associations, and savings and loan associations located in the state, except as otherwise provided by law, subject to national supervision or state examination. The board of investments may require the payment of quarter annual interest on daily balances of collected funds at a rate to be agreed upon between the depository banks, building and*



*loan associations, and savings and loan associations and the board of investments, which rate shall be fixed semiannually during the months of July and January of each year.*

(2) *No such deposits in excess of the amount insured by the federal deposit insurance corporation or federal savings and loan insurance corporation shall be made unless the bank, building and loan association and savings and loan association first delivers to the state treasurer or deposits in trust with some solvent bank as hereinafter provided, as security therefor, bonds or other obligations of the kinds listed in section 4 of this act, having a market value at least equal to the amount of such deposits in excess of the amount so insured. The board of investments may require security of a greater value. When negotiable securities are placed in trust, the trustees' receipt may be accepted instead of the actual securities if the receipt is in favor of the state treasurer, his successors in office, and the state of Montana, and the form of receipt and the trustee have been approved by the board of investments.*

(3) *When moneys have been deposited, under the board of investments and in accordance with the law, the treasurer is not liable for loss on account of any such deposit occurring from any cause other than his own neglect or fraud. The state treasurer shall deposit funds in such banks, building and loan associations and savings and loan associations, and in such amounts as may be designated by the board of investments, and withdraw such deposits when instructed to by the board of investments. The state treasurer shall withdraw all deposits, or any part thereof, from time to time, to pay and discharge the legal obligations of the state, duly presented to him in accordance with the law.*

(4) *Any bank, building and loan association and savings and loan association pledging securities as provided in this section may at any time substitute securities for any part of the securities pledged. The collateral so substituted shall conform to section 4 of this act and have a market value at least sufficient for compliance with subsection (2) above. If the securities so substituted are held in trust, the trustee shall, on the same day the substitution is made, forward by registered or certified mail to the state treasurer and to the depository bank, a receipt specifically describing and identifying both the securities substituted and those released and returned to the depository bank."*

Section 2. Section 79-302, R.C.M. 1947, is amended to read as follows:

**"79-302. Interest requirements on Montana public funds — federal conformity.** The interest requirements on deposits of public funds under the laws of the state of Montana or otherwise by county, city and town treasurers shall not at any time be in violation of any act of the Congress of the United States or of any rule or regulation of the federal reserve system, *Federal Home Loan Bank System*, or the Federal Deposit Insurance Corporation, *Federal Savings and Loan Insurance Corporation* or any other fiscal agency of the United States or created by it, of which the banks, *building and loan associations or savings and loan associations* of this state generally may be members or debtors.

Section 3. Section 79-306, R.C.M. 1947, is amended to read as follows:

**"79-306. State treasurer as treasurer of state agencies — deposits of moneys.** (1) *The state treasurer is designated the treasurer of every state agency and institution.*

(2) *All state agencies and institutions shall deposit daily all moneys, credits, evidences of indebtedness, and securities either in banks, building and loan associations or savings and loan associations located in the city or town in which the agencies and institutions are situated if there is a qualified bank, building and loan association or savings and loan association in the city or town as designated by the state treasurer with the approval of the board of investments, or with the state treasurer. Such banks, building and loan association or savings and loan association shall pledge securities sufficient to cover the deposits at all times, and the deposits shall be made in the name of the state treasurer, and shall be subject to withdrawal at his option, and shall draw interest as other state moneys, in accordance with the provisions of sections 79-301 and 79-302.*

(3) *Nothing in this chapter shall impair or otherwise affect any covenant entered into pursuant to law by any agency or institution respecting the segregation, deposit, and investment of any revenues or funds pledged for the payment and security of bonds or other obligations authorized to be issued by such agency, and all such funds shall be deposited and invested in accordance with such covenants notwithstanding any provision of this chapter."*

Approved February 14, 1974

## CHAPTER NO. 15

AN ACT AMENDING SECTION 95-1005, R.C.M. 1947, PROVIDING THAT THE DEPARTMENT OF FISH AND GAME AND THE DEPARTMENT OF JUSTICE BEAR ALL COSTS OF PROSECUTION IN CASES OF ARRESTS MADE BY AGENTS OF THE RESPECTIVE DEPARTMENT.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 95-1005, R.C.M. 1947, is amended to read as follows:

**"95-1005. Remuneration of appointed counsel.** Whenever, in a criminal action or proceeding, an attorney at law represents or defends any person by order of the court, on the ground that the person is financially unable to employ counsel, such attorney shall be paid for his services such sum as a district court or justice of the state supreme court certifies to be a reasonable compensation therefor and shall be reimbursed for reasonable costs incurred in the criminal proceeding. Such costs shall be chargeable to the county in which the proceeding arose, except *that* (a) in proceedings solely involving the violation of a city ordinance or state statute prosecuted in a municipal, city or police court wherein costs shall

be chargeable to the city or town in which the proceeding arose, and (b) *in arrests in criminal proceedings by agents of the department of fish and game and arrests by agents of the department of justice, the costs (including attorneys' fees of attorneys appointed by the court for the defendant) must be borne by the state agency causing the arrest.*"

Approved February 15, 1974

## CHAPTER NO. 16

AN ACT TO AMEND SECTION 19-107, R.C.M. 1947, CHANGING THE OFFICIAL DATE OF THE VETERANS' DAY HOLIDAY.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 19-107, R.C.M. 1947, is amended to read as follows:

"19-107. **Legal holidays and business days defined.** The following are legal holidays in the state of Montana:

- (1) Each Sunday.
- (2) New Year's Day, January 1.
- (3) Lincoln's Birthday, February 12.
- (4) Washington's Birthday, the third Monday in February.
- (5) Memorial Day, the last Monday in May.
- (6) Independence Day, July 4.
- (7) Labor Day, the first Monday in September.
- (8) Columbus Day, the second Monday in October.
- (9) Veterans' Day, *November 11*.
- (10) Thanksgiving Day, the fourth Thursday in November.
- (11) Christmas Day, December 25.

(12) State general election day. If any of the above-enumerated holidays (except Sunday) fall upon a Sunday, the Monday following is a holiday. All other days are business days.

Whenever any bank in the state of Montana elects to remain closed and refrains from the transaction of business on Saturday, pursuant to authority for permissive closing on Saturdays by virtue of the laws of the state, legal holidays for such bank during the year of such election are hereby limited to the following holidays:

- (1) Each Sunday.
- (2) New Year's Day, January 1.

- (3) Memorial Day, the last Monday in May.
- (4) Independence Day, July 4.
- (5) Labor Day, the first Monday in September.
- (6) Thanksgiving Day, the fourth Thursday in November.
- (7) Christmas Day, December 25.

(8) On such days as banks are closed in accordance with sections 5-1058 to 5-1062. Any bank practicing Saturday closing in compliance with law may remain closed and refrain from the transaction of business on Saturdays, notwithstanding that a Saturday may coincide with a legal holiday other than one of the holidays designated above for banks practicing Saturday closing in compliance with law, and provided further that it shall be optional for any bank, whether practicing Saturday closing or not, to observe as a holiday and to be closed on any day upon which a general election is held throughout the state of Montana and on Veterans' Day, *November 11*, and on any local holiday which historically or traditionally or by proclamation of a local executive official or governing body is established as a day upon which businesses are generally closed in the community in which the bank is located."

Approved February 15, 1974

## CHAPTER NO. 17

AN ACT AMENDING SECTION 46-701, R.C.M. 1947, TO REQUIRE THE STOCK INSPECTORS AND DETECTIVES HIRED BY THE BOARD OF LIVESTOCK TO PASS A QUALIFYING EXAMINATION.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 46-701, R.C.M. 1947, is amended to read as follows:

"46-701. **Appointment and powers.** The *board of livestock* may appoint such stock inspectors and detectives as are necessary for the protection of the livestock interests of the state. Such inspectors and detectives shall take and subscribe the official oath required by law and shall have like powers and authority as are conferred by law upon deputy sheriffs; save they shall not be entitled to the fees or emoluments awarded by law to deputy sheriffs. *The board of livestock shall devise an examination for the qualification of stock inspectors and detectives, and may appoint and employ only persons who successfully pass such examination. The board shall promulgate administrative rules for the taking of this examination and define a passing grade.*

Approved February 15, 1974

## CHAPTER NO. 18

AN ACT TO AMEND SECTIONS 53-119 AND 53-119.1, R.C.M. 1947, BY PROVIDING A JUNK VEHICLE, AS DEFINED IN CHAPTER 410,

MONTANA SESSION LAWS, 1973, TITLE 69, CHAPTER 68, R.C.M. 1947, BEING DRIVEN OR TOWED TO AN AUTO WRECKING GRAVEYARD FOR DISPOSAL IS EXEMPT FROM THE PROVISIONS OF THESE SECTIONS; AND PROVIDING FOR AN EFFECTIVE DATE OF THE ACT.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 53-119, R.C.M. 1947, is amended to read as follows:

**"53-119. Must have license plates.** Except as otherwise provided herein, no person shall operate a motor vehicle upon the public highways of this state without a license and unless such vehicle shall have been properly registered and shall have the proper number plates conspicuously displayed, one (1) on the front and one (1) on the rear of such vehicle, each securely fastened so as to prevent the same from swinging and unobstructed from plain view, except that trailers and semitrailers shall have but one (1) number plate conspicuously displayed on the rear. No person shall display on such vehicle at the same time any number assigned to it under any motor vehicle law, except as in this act otherwise provided. No person shall purchase or display on such vehicle any license plate bearing the number assigned to any county as provided in section 53-106, other than the county of his permanent residence at the time of application for registration. Provided, however, that the owner of any motor vehicle requiring a license plate on any motor vehicle used in the public transportation of persons or property may make application therefor in any county through which said motor vehicle passes in its regular scheduled route, and the license plate so issued bearing the number assigned to said county may be displayed on said motor vehicle in any other county of the state. It is further provided that it shall be unlawful to use license plates issued to one (1) vehicle on any other vehicle, trailers or semitrailers unless legally transferred as provided by statute, or repainting old license plates to resemble current license plates and any person violating these provisions shall be deemed guilty of a misdemeanor and shall be subject to the penalty as set out in section 53-132. *Provided, however, that a junk vehicle, as defined in chapter 410, Montana Session Laws 1973, Title 69, chapter 68, R.C.M. 1947, being driven or towed to an auto wrecking graveyard for disposal is exempt from the provisions of this section.*"

Section 2. Section 53-119.1, R.C.M. 1947, is amended to read as follows:

**"53-119.1. Special permits for vehicles engaged in a single movement on the highways—fee—limitation—county treasurer to issue.** A vehicle, subject to license under Title 53, may be moved unladen upon the highways of this state from a point within the state to a point of destination, the county treasurer at the point of the origin of the movement, shall issue a special permit therefor in lieu of fees required under sections 53-122 and 53-615, upon application presented to him in such

form as shall be provided by the registrar of motor vehicles and upon exhibiting to said county treasurer proof of ownership and evidence that the personal property taxes on such vehicle, if any are due thereon, have been paid and upon payment therefor a fee of five dollars (\$5). Such permit shall not be in lieu of fees and permits required under sections 53-630 through 53-638.

Such permit shall be for the transit of the vehicle only, and the vehicle shall not at the time of such transit, be used for the transportation of any persons, except the driver, or property whatsoever for compensation or otherwise, and shall be for one (1) transit only between the points of origin and destination as set forth in the application and shown on the permit. *Provided, however, that a junk vehicle as defined in chapter 410, Montana Session Laws 1973, Title 69, chapter 68, R.C.M. 1947, being driven or towed to an auto wrecking graveyard for disposal is exempt from the provisions of this section.*

For the purpose of this section, a mobile home shall be considered unladen, when all items are removed, except the equipment originally installed by the manufacturer; and personal effects of owners.

Definition of a mobile home—house trailer for the purposes of this section. A trailer or semitrailer which is designed, constructed and equipped as a dwelling place, living abode or sleeping place (either permanently or temporarily) and is equipped for movement on streets and highways, and exceeds twenty-five (25) feet in length, exclusive of trailer hitch."

Section 3. This act is effective upon its passage and approval.

Approved February 15, 1974

## CHAPTER NO. 19

AN ACT PERMITTING THE OPERATION OF MOTORCYCLES BY THE HOLDERS OF TRAFFIC EDUCATION PERMITS AND AMENDING SECTION 31-129, R.C.M. 1947.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 31-129, R.C.M. 1947, is amended to read as follows:

**"31-129. Instruction and traffic education permits and temporary licenses.** (a) Any person satisfying the age requirements specified in 31-127 (1), may apply to the board for an instruction permit. The board may in its discretion, after the applicant has successfully passed all parts of the examination other than the driving test, issue to the applicant an instruction permit which shall entitle the applicant, while having such permit in his immediate possession, to drive a motor vehicle upon the public highways for a period of six (6) months when accompanied by a licensed operator or chauffeur who is occupying a seat beside the driver. In addition, the board may issue such an instruction permit to any person

who is at least fourteen and one-half (14 ½) years of age and who is successfully participating in a traffic education course approved by the Montana highway patrol and the superintendent of public instruction. Any instruction permit so issued shall be restricted to the operation of a motor vehicle only when accompanied by an approved instructor, or licensed parent or guardian and may be further restricted to specific times and/or areas.

(b) The board upon receiving proper application may in its discretion issue a traffic education permit effective for a school year or more restricted period to an applicant who is enrolled in a traffic education program approved by the board even though the applicant has not reached the legal age to be eligible for an operator's license. Such permit shall entitle the permittee when he has such a permit in his immediate possession to operate only on a designated highway or within a designated area *a motor vehicle only when an approved instructor is occupying a seat beside the permittee or a motorcycle only when under the immediate and proximate supervision of an approved instructor.*

(c) The board may in its discretion issue a temporary driver's permit to an applicant for an operator's license permitting him to operate a motor vehicle while the board is completing its investigation and determination of all facts relative to such applicant's right to receive an operator's license. Such permit must be in his immediate possession while operating a motor vehicle, and it shall be invalid when the applicant's license has been issued or for good cause has been refused."

Approved February 15, 1974

## CHAPTER NO. 20

AN ACT AMENDING SECTIONS 26-302 AND 26-303, R.C.M. 1947, CHANGING THE REQUIREMENT FOR WEARING HUNTER ORANGE WHILE HUNTING BIG GAME.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 26-302, R.C.M. 1947, is amended to read as follows:

"26-302. **Big game hunters to wear colored garments.** (1) It shall be unlawful for any person to hunt any of the big game animals in this state or to accompany any hunter as an outfitter or guide under any of the provisions of the laws of this state without such person wearing as exterior garments *above the waist* a total of not less than four hundred (400) square inches of hunter orange material *visible at all times while hunting.*

(2) "Hunter orange" means a daylight fluorescent orange color.

This section shall not apply to any person hunting with a bow and arrow *during the special archery season.*

(3) Failure of any person to comply with this section shall not be treated as evidence of contributory negligence in a civil action for injury to him or for his wrongful death.

(4) *The commission shall make regulations to implement this section.*"

Section 2. Section 26-303, R.C.M. 1947, is amended to read as follows:

"26-303. **Penalty.** Any person convicted of a violation of any of the provisions of this act shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than *ten dollars (\$10)* or more than *twenty dollars (\$20)*."

Approved February 15, 1974

## CHAPTER NO. 21

AN ACT TO AMEND SECTION 32-3911, R.C.M. 1947, TO ALLOW SALES OF INTERESTS IN REAL PROPERTY CONDUCTED BY THE DEPARTMENT OF HIGHWAYS TO BE CONDUCTED IN THE COUNTY WHEREIN THE PROPERTY IS LOCATED.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 32-3911, R.C.M. 1947, is amended to read as follows:

"32-3911. **Conduct of sale.** (1) The commission shall publish notice of the sale in a newspaper published in the county in which the interest is located once a week for two (2) successive weeks. Sale shall be held *in the county wherein the property is located unless the department finds it impractical in which case the sale will be held at the office of the department at the capitol.*

(2) Before any sale of any interest having a value in excess of one hundred dollars (\$100), the commission shall have it appraised at a price representing a fair market value. The appraised value shall be stated in the published notice.

(3) No sale shall be made of any interest unless it has been appraised within three (3) months prior to the date of the sale. No sale shall be made for less than ninety per cent (90%) of the appraised value.

(4) No title to any interest shall pass from the state until the purchaser has paid the full amount of the purchase price into the state treasury to the credit of the commission."

Approved February 15, 1974

## CHAPTER NO. 22

AN ACT TO AMEND SECTION 75-8305, R.C.M. 1947; AUTHORIZING



AND REQUIRING TRUSTEES OF SCHOOL DISTRICTS TO EMPLOY OTHER LEGAL COUNSEL THAN THE COUNTY ATTORNEY IN THE EVENT OF A CONFLICT OF INTEREST.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 75-8305, R.C.M. 1947, is amended to read as follows:

"75-8305. **Duty of county attorney.** Upon request of the county superintendent or the trustees of any school district, the county attorney shall be their legal adviser and shall prosecute and defend all suits to which such persons, in their capacity as public officials, may be a party, however, the trustees of any school district may, upon consent of the county attorney, employ any *other* attorney licensed in Montana to perform any legal services in connection with school board business."

Section 2. **Conflict of interest.** In the event there should arise a conflict of interest relating solely to the performance of the official duties of the county attorney and which does not relate to a conflict of interest involving the private employment of the county attorney, the trustees of any school district shall employ any other attorney licensed in Montana.

Approved February 16, 1974

## CHAPTER NO. 23

AN ACT AMENDING SECTION 93-401, R.C.M. 1947, TO CHANGE THE RESPONSIBILITY OF CONDUCTING THE JUSTICE OF THE PEACE ORIENTATION COURSE FROM THE MONTANA MAGISTRATE'S ASSOCIATION TO THE UNIVERSITY OF MONTANA SCHOOL OF LAW.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 93-401, R.C.M. 1947, is amended to read as follows:

"93-401. **Justices' courts and justices of the peace.** (1) There must be at least one (1) justice court in each county of the state, for which one (1) justice of the peace must be elected by the qualified electors of the county at the general state election next preceding the expiration of the term of office of his predecessor.

(2) A justice of the peace shall be nominated and elected on the non-partisan judicial ballot in the same manner as are judges of the district court. Each judicial office shall be a separate and independent office for election purposes and each office shall be numbered by the county commissioners and each candidate for justice of the peace shall specify

the number of the office for which he seeks to be elected. A candidate may not file for more than one (1) office. Section 23-4511 prohibiting political party endorsement for judicial officers shall also apply to justices of the peace.

(3) Each justice of the peace, elected or appointed, after he has received his certificate of election or appointment, shall, before entering upon the duties of his office take the constitutional oath of office, which must be filed with the county clerk.

(4) Before the county clerk may file the oath the elected or appointed justice must satisfy the clerk that he is either:

(a) an attorney at law authorized to practice law in the state of Montana, or

(b) a person who has held the office of justice of the peace within the preceding five (5) years, or

(c) a person who has completed the orientation course of study held under the direction of the *university of Montana law school*; or if a person is appointed after the course is offered he must agree to take the course at the next offering and failure to do so will disqualify him.

(5) The *university of Montana law school* shall present a course of study *as soon as is practical* following each general election. Mileage and per diem shall be paid the elected or appointed justice of the peace for attending the course and shall be a proper charge against the county wherein the justice of the peace will hold court."

Approved February 16, 1974

## CHAPTER NO. 24

AN ACT AMENDING SECTION 7 OF CHAPTER 397, LAWS OF 1971, AS CODIFIED IN CHAPTER 17, TITLE 3, R.C.M. 1947, BY REPEALING THE EXPIRATION DATE OF A LAW PROVIDING FOR AN ASSESSMENT ON FERTILIZER TO PRODUCE FUNDS FOR THE MONTANA CO-OPERATIVE EXTENSION SERVICE AND THE MONTANA AGRICULTURAL EXPERIMENT STATION OF MONTANA STATE UNIVERSITY, BOZEMAN, FOR A STATEWIDE FERTILIZER AND RELATED SOIL MANAGEMENT PROGRAM OF EDUCATION.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 7 of Chapter 397, Laws of 1971, as codified in Chapter 17, Title 3, R.C.M. 1947, is amended to read as follows:

"This act shall become effective on March 15, 1971."

Approved February 16, 1974

**CHAPTER NO. 25**

AN ACT PROHIBITING THE DISCHARGE OF A FIREARM FROM OR ACROSS A COUNTY ROAD; AND AMENDING SECTION 32-21-113, R.C.M. 1947.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 32-21-113, R.C.M. 1947, is amended to read as follows:

**"32-21-113. Shooting from or across highway.** No person shall shoot any firearm from or across the roadway of any state or federal highway, or county road.

Approved February 19, 1974

**CHAPTER NO. 26**

AN ACT TO AMEND SECTION 11-721, R.C.M. 1947, RELATING TO THE REMOVAL OF OFFICERS.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 11-721, R.C.M. 1947, is amended to read as follows:

**"11-721. Vacancies—how filled—removal of officer.** When any vacancy occurs in any elective office, the council, by a majority vote of the members, may fill the same for the unexpired term, and until the qualification of the successor. A vacancy in the office of alderman must be filled from the ward in which the vacancy exists, but if the council shall fail to fill such vacancy before the time for the next election, the qualified electors of such city or ward may nominate and elect a successor to such office. The council, upon written charges, to be entered upon their journal, after notice to the party and after trial by the council, by vote of two-thirds of all the members elect, may remove any *non-elected* officer."

Approved February 19, 1974

**CHAPTER NO. 27**

AN ACT TO AMEND SECTIONS 26-201, 46-1902 AND 46-1903, R.C.M. 1947, TO REMOVE THE MOUNTAIN LION, WOLVERINE AND COUGAR FROM THE PREDATORY ANIMAL AND WILD ANIMAL CLASSIFICATION.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 26-201, R.C.M. 1947, is amended to read as follows:

"26-201. **Definitions.** For the purposes of this act, the following shall be construed, respectively to mean:

Commission. The state fish and game commission.

Person. The plural or singular, male or female, as the case demands, including individual, associations, partnerships, and corporations, unless the context otherwise requires.

Open season. The time during which game birds, fish, game and fur-bearing animals may be lawfully taken.

Closed season. The time during which game birds, fish, game and fur-bearing animals may not be lawfully taken.

Angling or fishing. The taking of, or attempting to take fish by hook and single line or single rod in hand or within immediate control.

Upland game birds. Sharptail grouse, blue grouse, prairie chicken, sage hen or sage grouse, fool hen, ruffed grouse, commonly called native pheasant or native partridge, quail, Chinese pheasant and Mongolian pheasant, commonly called ring-necked pheasant, Hungarian partridge, ptarmigan, wild turkey, and chukar partridge.

Migratory game birds. Waterfowl, including wild ducks, wild geese, brant, and swans; cranes, including little brown, sandhill and whooping cranes; rails, including coots, gallinules, sora or other rails; shore birds, including avocets, curlew, dowitcher, godwits, knots, upland plover, killdeer, sandpipers, Wilson snipes or jacksnipes, snipes, stilts, plovers, willets and yellow legs.

Nongame birds. All wild birds not defined herein as upland game birds or migratory game birds, shall be deemed nongame birds.

Game animals. Deer, elk, moose, antelope, caribou, mountain sheep, mountain goat, mountain lion, and bear.

Fur-bearing animals. Marten or sable, otter, muskrat, fisher, mink, beaver and black-footed ferret.

Predatory animals. Coyote, wolf, weasel, skunk and civet cat, and bobcat.

Game fish. All species of the family salmonidae (chars, trout, salmon, grayling, and whitefish); all species of the genus stizostedion (sandpike or sauger and walleyed pike or yellowpike perch); all species of the genus esox (northern pike, pickerel and muskellunge); all species of the genus micropeterus (bass); all species of the genus polyodon (paddlefish) and all species of the genus acipenser (sturgeon).

Wild buffalo. Buffalo or bison which have not been reduced to captivity."

Section 2. Section 46-1902, R.C.M. 1947, is amended to read as follows:

"46-1902. **Meaning of term "wild animal."** For the purpose of this act the term "wild animal" shall include wolf, coyote, lynx, bobcat, and any other animal causing depredations upon livestock."

Section 3. Section 46-1903, R.C.M. 1947, is amended to read as follows:

"46-1903. **Livestock commission to supervise destruction of predatory animals — co-operation with other agencies — advisory committee — administration of moneys.** (a) The destruction, extermination and control of wild animals, including wolf, coyote, lynx, bobcat and any other wild animals predatory in nature and causing, or capable of causing the killing, destruction, maiming or injury of domestic livestock of all species, and of domestic poultry of all varieties, or depredations thereon, shall, as respects the protection and safeguarding of all said livestock and poultry in the state, against all depredations from such animals, be conducted in the state and carried out by the Montana livestock commission which is hereby charged with the primary duty and responsibility of formulating practical programs for accomplishing said objectives in all areas of Montana, and of carrying out such programs in an efficient and practical manner, responsive to the need for control in each area of the state. The said commission shall adopt such standing rules and regulations, within the purview of the authority vested in it by the statutes of the state of Montana applicable to predatory animal control, as are necessary and proper for the systematic destruction of said wild animals by hunting, trapping and poisoning operations, and payments of bounties, and the commission shall, from time to time, issue, modify, amend or repeal field, area, range, or other orders and instructions, including orders and instructions to hunter and trapper personnel and others, as may be appropriate in the various areas, at different seasons of the year, and with reference to the habits, presence, migrations or movements of such animals, and their attacks on livestock and poultry, either singly or in packs or bands. The said commission is hereby expressly authorized, empowered and directed to co-operate with the duly authorized representatives of the United States, including its Biological Survey, its Fish and Wild Life Service, with the state fish and game commission of the state of Montana, and with boards of county commissioners in the several counties of the state, and with voluntary associations of stockgrowers, sheepgrowers, ranchers, farmers and sportsmen, and with corporations and individuals, in the systematic destruction of said wild animals by hunting, trapping and poisoning operations.

(b) The governor shall appoint an advisory committee, composed of one (1) representative of each, the Montana Woolgrowers' Association, the Montana County Commissioners' Association, the Montana Stockgrowers' Association, the Montana Federated Wildlife Clubs, and the state fish and game warden, which advisory committee shall consult with and advise the Montana livestock commission, the state fish and game commission, and county and local predatory animal control organizations in all matters pertaining to their activities hereunder and under any other laws of this

state applicable to predatory animal control, and develop and formulate plans for effective predatory animal extermination and controls throughout the state, and advise with respect to the expenditure of all moneys for the control of such animals by each said agencies, organizations and persons. The secretary of the Montana livestock commission shall be ex officio, secretary of said advisory committee, and the committee shall elect one (1) of its members chairman thereof. The committee shall meet on five (5) days' notice, at the call of its chairman, or at request of any two members, or at the request of the Montana livestock commission.

(c) The Montana livestock commission shall administer and expend for predatory animal extermination and control, in production of livestock and poultry in the state of Montana all the moneys that are or may be made available to it, including the moneys from the levy under section 84-5214 and all such moneys as are made available to said commission by appropriations made by the legislative assembly for predatory animal control by said commission. The commission shall expend said funds for predatory animal control by all effective means, including employment of hunters, trappers and other personnel, procurement of traps, poisons, equipment and supplies, and, also, for the payment of bounties within the sound discretion of the commission, as advised by the advisory agencies aforesaid, and responsive to the necessities of control in various areas of the state. The commission shall not consider or approve any claims against funds available to it, in excess of the amounts available in any biennium, and no warrants shall be issued or registered for any such claims whether for bounties or for any other purposes.

(d) Nothing herein contained shall be construed to interfere with or impair the power and duties of the state fish and game commission in the control of predatory animals by said commission as authorized by law, nor the obligation of said commission to expend its funds in co-operation with the Montana livestock commission, for predatory animal control as required by law, provided that all funds of the state fish and game commission for such co-operative predatory animal control shall be administered and expended by the state fish and game commission."

Approved February 19, 1974

## CHAPTER NO. 28

AN ACT ABOLISHING THE BOARD OF HIGHWAY APPEALS AND TRANSFERRING ITS FUNCTIONS TO THE BOARD OF PERSONNEL APPEALS AND THE HIGHWAY COMMISSION; PROVIDING FOR PERSONNEL APPEALS; AND REPEALING SECTIONS 82A-704 AND 82A-705, R.C.M. 1947.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is a new section to be numbered 82A-709, R.C.M. 1947, which reads as follows:

**82A-709. Board of highway appeals abolished — functions transferred.** The board of highway appeals, created in section 82A-704, is abolished and its functions are transferred as follows:

(1) Its functions relating to the quasi-judicial capacity of hearing grievances of personnel of the department are transferred to the board of personnel appeals provided for in section 82A-1014. Unless inconsistent with this title, any reference in the Revised Codes of Montana, 1947, to the board of highway appeals (pertaining to its functions of hearing grievances of personnel of the department) means the board of personnel appeals;

(2) Its functions relating to the hearing of disputes resulting from the administration and enforcement of proportional registration agreements under Title 53, chapter 7, are transferred to the highway commission. Unless inconsistent with this title, any reference in the Revised Codes of Montana, 1947, to the board of highway appeals (pertaining to its functions contained in Title 53, chapter 7) means the highway commission.

Section 2. There is a new section to be numbered 32-2505, R.C.M. 1947, which reads as follows:

**32-2505. Personnel grievances — hearings.** The board of personnel appeals, provided for in section 82A-1014, shall hear grievances of personnel of the department of highways. An employee of the department who has a grievance and who has exhausted all other administrative remedies within the department, is entitled to a hearing before the board of personnel appeals for a resolution of the grievance. A grievance of an employee means an employee's dissatisfaction concerning a serious matter of his employment based upon work conditions, supervision, or the result of an administrative action.

Section 3. Sections 82A-704 and 82A-705, R.C.M. 1947, are repealed.

Approved February 22, 1974

## CHAPTER NO. 29

AN ACT AUTHORIZING ELEMENTARY SCHOOL DISTRICT TRUSTEES TO PETITION FOR, AND COUNTY SUPERINTENDENTS TO CHANGE DISTRICT BOUNDARIES.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Boundary adjustments in elementary school districts.** The trustees of an elementary school district may, by resolution, request a change in the boundaries between their district and an adjacent district. The resolution shall be addressed to the county superintendent of schools, who, upon receiving such a resolution, shall proceed as set forth in section 75-6516.

Section 2. **Review of boundaries by county superintendent.** A county superintendent of schools shall, at least once every three (3) years, review the existing elementary school district boundaries in the county. This review and any recommended boundary changes shall be presented by the superintendent at a hearing conducted under section 75-6516. If the superintendent orders a boundary change after the hearing, he shall forward copies of his review and the testimony at the hearing to the board of county commissioners and the state superintendent of public instruction.

Approved February 22, 1974

## CHAPTER NO. 30

AN ACT AMENDING SECTION 43-711, R.C.M. 1947, TO AUTHORIZE THE LEGAL SERVICES DIVISION OF THE LEGISLATIVE COUNCIL TO ASSIGN CATCH LINES AND SECTION NUMBERS TO BILLS WITHOUT SUCH INFORMATION; AND PROVIDING FOR AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 43-711, R.C.M. 1947, is amended to read as follows:

"43-711. **Executive director — personnel — standing and select committees.** (1) The legislative council may employ an executive director and such other personnel, not members of the council, as it deems necessary to assist in the preparation of standing and select committee and subcommittee reports and recommendations, proposed legislative acts and any other activities and shall fix the compensation of such employees. It shall further have the power to employ the services of any research agency which it deems necessary in the discharge of its duties.

(2) The legislative council may establish functional divisions within the council staff in order to carry out all of the responsibilities delegated to the council by law or legislative rule, and shall include the following:

- (a) Legislative services division;
  - (i) engrossing and enrolling,
  - (ii) mailroom,
  - (iii) printing;
- (b) Research and reference services division;
  - (i) general and specialized legislative research,
  - (ii) legislative reference and information, including preparation and publication of the Legislative Review to be sold at the cost of the publication plus postage,



(iii) committee staffing when the legislature is not in session;

(c) Legal services division;

(i) bill drafting,

(ii) legal counseling,

*(iii) this division is authorized to assign code section numbers and catch lines to bills which have passed both houses without catch lines or section numbers prior to the enrolling process.*

(d) Management and business services division;

(i) maintain bookkeeping records,

(ii) sign claims and payrolls,

(iii) order all printing, supplies, and equipment,

(iv) serve house and senate during the session."

Section 2. This act is effective on its passage and approval but shall be automatically terminated and repealed one (1) year from the date of its approval or upon the passage, approval and implementation of the Montana Codes Commissioner Act, which shall supercede this act.

Approved February 22, 1974

## CHAPTER NO. 31

AN ACT AMENDING SECTION 4-333, R.C.M. 1947, TO LICENSE THE SALE OF WINE IN CERTAIN ESTABLISHMENTS LICENSED TO SELL BEER.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 4-333, R.C.M. 1947, is amended to read as follows:

**"4-333. Issuance of retail beer licenses — limit on number of — off-premises beer licenses — lapse and cancellation — wine license amendments — retail license fee.** (1) Except as otherwise provided by law, a license to sell beer at retail in accordance with the provisions of this act and the regulations of the *department of revenue*, may be issued to any person, firm or corporation who shall be approved by a majority of the board as a fit and proper person, firm or corporation to sell beer; provided, that the number of retail beer licenses that the board may issue shall be determined as follows:

(a) The number of retail beer licenses that the board may issue for premises situated within incorporated cities and incorporated towns and within a distance of five (5) miles from the corporate limits of such cities and towns shall be determined on the basis of population as shown by the most recent official United States census authorized by Congress, to

wit: In incorporated towns of five hundred (500) inhabitants or less and within a distance of five (5) miles from the corporate limits of such towns, not more than two (2) retail beer licenses to be used in conjunction with retail liquor licenses and not more than one (1) additional retail beer license which shall not be used in conjunction with a retail liquor license; in incorporated cities or incorporated towns of more than five hundred (500) inhabitants and not over two thousand (2000) inhabitants and within a distance of five (5) miles from the corporate limits of such cities or towns, two (2) retail beer licenses for the first five hundred (500) inhabitants and one (1) retail beer license for each additional five hundred (500) inhabitants, which said retail beer licenses shall be used in conjunction with retail liquor licenses, and one (1) additional beer license for each five hundred (500) inhabitants which said beer license shall not be used in conjunction with retail liquor licenses; in incorporated cities of over two thousand (2000) inhabitants and within a distance of five (5) miles from the corporate limits of such cities, five (5) retail beer licenses for the first two thousand (2000) inhabitants and one (1) retail beer license for each additional one thousand (1000) inhabitants which said retail beer licenses shall be used in conjunction with retail liquor licenses, and two (2) additional retail beer licenses for the first two thousand (2000) inhabitants or major fraction thereof and one (1) additional retail beer license for each additional two thousand (2000) inhabitants which shall not be used in conjunction with retail liquor licenses. The number of the inhabitants in such cities and towns, exclusive of the number of inhabitants residing within a distance of five (5) miles from the corporate limits thereof, shall govern the number of retail beer licenses that may be issued for use within such cities and towns and within a distance of five (5) miles from the corporate limits thereof; provided, that where two (2) or more incorporated municipalities are situated within a distance of five (5) miles from each other, the total number of retail beer licenses that may be issued for use in both of such municipalities and within a distance of five (5) miles from their respective corporate limits, shall be determined on the basis of the combined populations of both of such municipalities and shall not exceed the foregoing limitations. The said distance of five (5) miles from the corporate limits of any incorporated city or incorporated town shall be measured in a straight line from the nearest entrance of the premises proposed for licensing to the nearest corporate boundary of such city or town. Retail beer licenses of issue on the date of the passage and approval of this act and which are in excess of the foregoing limitations shall be renewable, but no new licenses shall be issued in violation of such limitations; provided, that such limitations shall not prevent the issuance of a nontransferable and nonassignable retail beer license to any post of a nationally chartered veterans' organization or any lodge of a recognized national fraternal organization, if such veterans' or fraternal organization has been in existence for a period of five (5) years or more prior to January 1, 1949. No incorporated city or incorporated town may by ordinance restrict the number of licenses that the board may issue; provided that no retail beer license may be issued by the board for any premises situated within any zone of such city or town wherein the sale of beer is prohibited by ordinance, a certified copy of which has been filed with the board. The board shall have discretion to deny the issuance of a retail beer license if it shall determine that the premises proposed for

licensing are off regular police beats and cannot be properly policed by local authorities.

(b) The number of retail beer licenses that the board may issue for use at premises situated outside of any incorporated city or incorporated town and outside of the area within a distance of five (5) miles from the corporate limits thereof, or for use at premises situated within any unincorporated town shall be as determined by the board in the exercise of its sound discretion; provided, that no retail beer license shall be issued for any premises so situated unless the board shall determine that the issuance of such license is required by public convenience and necessity.

(2) A retail license to sell beer in the original packages for off-premise consumption only may be issued to any person, firm or corporation who shall be approved by a majority of the board as a fit and proper person, firm or corporation to sell beer and whose premises proposed for licensing are operated as a bona fide grocery store or a drugstore licensed as a pharmacy. The number of such licenses that the board may issue shall not be limited by the provisions of subsection (1) of this section, but shall be determined by the board in the exercise of its sound discretion, and the board may in the exercise of its sound discretion grant or deny any application for any such license or suspend or revoke any such license for cause. The annual license fee for a license to sell beer at retail for off-premises consumption shall be the same as for a retail beer license.

(3) From and after February 1, 1949, any retail license issued pursuant to this act (including any retail license to sell beer for off-premises consumption), not actually used in a going establishment for a period of ninety (90) days, shall automatically lapse. Upon determining the fact of nonuser for such period the board shall cancel such license of record and no portion of the fee paid therefor shall be refundable. The provisions of this subsection shall not apply to the license of any licensee whose premises are operated on a seasonal basis in connection with a bona fide dude ranch, resort, park hotel, tourist facility or like business, provided such licensee has secured written authority from the board to close his licensed premises for a specified period of greater than ninety (90) days' duration, and providing further that should the liquor control board determine that such lapse was reasonably beyond the control of the licensee, then the lapse provision set out above shall not apply.

(4) *A person holding a license to sell beer for consumption on the premises at retail may apply to the department for an amendment to the license permitting the holder to sell wine as well as beer. The department may issue such amendment if it finds, on a satisfactory showing by the applicant, that the sale of wine for consumption on the premises would be supplementary to a restaurant or prepared food business. A person holding a beer-and-wine license may sell wine subject to the limitations imposed by this title on selling beer. He may buy wine only at retail from the department. Nonretention of the beer license, for whatever reason, shall mean automatic loss of the wine amendment license.*

(5) *The annual license fee for a license to sell wine on the premises, when issued as an amendment to a beer only license shall be two hundred dollars (\$200)."*

Approved February 25, 1974

**CHAPTER NO. 32****AN ACT REQUIRING THE INSPECTION OF LIVESTOCK WHICH DIES IN THE FEEDLOT; AND PROVIDING A PENALTY.**

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Feedlot defined.** A feedlot is a confined livestock feeding operation where the owner or operator of the feedlot feeds livestock belonging to others for a fee.

Section 2. **Dead animals in feedlots — inspection required.** When a stock animal dies in a feedlot, the feedlot operator shall notify the board of livestock or its representative of the death. The operator may not dispose of the carcass until a livestock inspector has observed it and determined the brand of the owner of the animal. A livestock inspector observing a dead stock animal pursuant to this section shall, within forty-eight (48) hours, send written notification to the owner of the animal.

Section 3. **Penalty.** A feedlot operator who violates section 2 of this act is guilty of a misdemeanor, and on conviction shall be subject to imprisonment for not more than six (6) months or a fine of not more than five hundred dollars (\$500), or both.

Approved February 25, 1974

**CHAPTER NO. 33****AN ACT TO AMEND SECTION 92-425, R.C.M. 1947, RELATING TO THE DEFINITION OF HUSBAND OR WIDOWER IN THE WORKMEN'S COMPENSATION ACT.**

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 92-425, R.C.M. 1947, is amended to read as follows:

"92-425. **Husband or widower defined.** "Husband" or "widower" means only a husband or widower living with, or legally entitled to be supported by the deceased at the time of her injury."

Approved February 25, 1974

**CHAPTER NO. 34****AN ACT TO AMEND SECTION 26-501.1, R.C.M. 1947, RELATING TO THE POSSESSION AND USE OF RAPTORS BY NONRESIDENTS.**

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 26-501.1, R.C.M. 1947, is amended to read as follows:

"26-501.1. **Protection and conservation of raptors—falconry.** (1) "Raptors" when used in this section means all birds of the orders falconiformes and strigiformes, commonly called falcons, hawks, eagles, ospreys, and owls.

(2) A person may not at any time hunt, capture, kill, possess, purchase, offer or expose for sale, or transport a raptor except as provided in this section.

(3) The commission may adopt specific rules for the keeping of records, and for the trapping, taking, possession, or training of raptors used in the practice of falconry, and may authorize the issuance of licenses to persons for the practice of falconry. It is unlawful for *any person* to possess a raptor or to train a raptor in the practice of falconry without a license.

(4) The peregrine falcon (*Falco peregrinus*), bald eagle (*Haliaeetus leucocephalus*), golden eagle (*Aquila chrysaetos*), and osprey (*Pandion haliaetus*) may not be captured in this state for the sport of falconry.

(5) The fee for a falconry license is three dollars (\$3) a year or any part of a year. A license expires April 30 each year.

(6) A license may not be issued to a person under the age of twelve (12) years.

(7) Species of raptors which are native to North America may be brought into Montana for the purposes of falconry unless that action is specifically prohibited by this section, the laws of other states, or the regulations of the federal government. Those raptors may be possessed, subject to this section. A person bringing a raptor into this state must be able to show proof of the area of origin.

(8) A licensee may not at any time possess more than three (3) raptors, including those that have been imported.

(9) Licensees may take raptors as young or fledglings from nests (unless specifically prohibited by commission rules), or by traps or nets which are humane in their operation and use. Not more than one (1) young may be taken from one (1) nest by a permittee or permittees, and at least one (1) young must be left in the nest. The commission may close an area of the state to the taking of raptors at any time or designate other raptors which may not be taken. This subsection does not permit the removal of raptors in any national or state refuge or park or in any area in which local laws may prohibit that activity. Trapping raptors is permitted only between September 1 and February 1.

(10) Raptors may not be used to intentionally flush or harass big game.

(11) Raptors may not be loosed intentionally at protected mammals and

birds. Game bird limits and all seasons and other regulations relating to game birds must be obeyed.

(12) A licensee may not transfer ownership or possession of a raptor taken or possessed under the provisions of this section without notifying the department of fish and game within ten (10) days after the date of transfer.

(13) Licensees shall have in possession a valid falconer's license when engaged in the practice of falconry. In addition, falconers loosing raptors at game birds shall have in possession a valid *resident or nonresident game bird* license.

(14) Falconry licenses or permits are not transferable and may be revoked for due cause at any time by the department.

(15) A person may not sell or offer for sale Montana raptors in this state. A person may not transport raptors out of the state except by permit issued by the department.

*Nonresidents who are working, attending schools, or otherwise living temporarily in the state of Montana may obtain a Montana falconry license and bring raptors, legally acquired in other states or countries, into the state of Montana; such nonresidents shall be allowed to hunt with falcons in the state of Montana subject to all Montana laws and regulations.*

(16) A person who violates this section or section 26-501 is guilty of a misdemeanor and shall be prosecuted under section 26-324.

(17) Predatory hawks and owls destroying livestock or poultry may be killed at any time by the livestock or poultry owners. Eagles may be killed in compliance with federal law and regulation."

Approved February 25, 1974

## CHAPTER NO. 35

AN ACT REQUIRING THAT POLICE OFFICERS BE AT LEAST FIFTY (50) YEARS OLD AND SERVE TWENTY (20) YEARS BEFORE THEY MAY BE PLACED ON THE RESERVE LIST, AND AMENDING SECTION 11-1821, R.C.M. 1947.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 11-1821, R.C.M. 1947, is amended to read as follows:

"11-1821. **Payment of police reserves.** (1) Whenever any policeman or officer shall from age or disability become transferred from the active list of the police officers of any city or town to the reserve list of the city or town, he shall thereafter be paid in monthly payments from the

funds in this act provided for, a sum equal to one-half the base salary, excluding overtime and payments in lieu of sick leave and annual leave he was receiving as an active officer computed on the highest salary received in any one month during the last year of active service; provided that after completing twenty (20) years or more of active service if a policeman or officer elects to serve an additional one (1) to ten (10) years then the payment from the police reserves fund shall be increased at the rate of one *percent* (1%) per year of additional service up to a maximum of sixty *percent* (60%) of the last year's average salary received as a monthly compensation for services as an active member of the police department. *No police officer hired after passage of this act may be transferred to the reserve list for reasons of age before he attains fifty (50) years of age and completes twenty (20) years of active service.*

(2) Upon the death of any policeman or any officer on the active list or reserve list of any city or town, his surviving dependent widow, if there be such a surviving widow, shall, as long as she remains his widow, be paid, from the police reserves' fund, a sum equal to one-half the base salary, excluding overtime and payments in lieu of sick leave and annual leave he was receiving as an active officer computed on the highest salary received in any one month during the last year of active service prior to the date of his demise or prior to the date the policeman or officer passes to the police reserve list. No surviving widow shall be entitled to payments under the provisions of this act if she be fifteen (15) years younger than her husband, unless she shall have been married to and living with her husband for ten (10) years immediately preceding his death. If the policeman or officer leaves a dependent minor child, or dependent minor children, then upon the death of the policeman or officer, providing he leaves no surviving widow, or upon the death or remarriage of his widow, or if his widow be fifteen (15) years younger than her husband and shall not have been married to and living with her husband for the ten (10) years immediately preceding his death, then his surviving dependent minor child, or dependent children, collectively, if there be more than one (1) dependent minor child, shall be paid the same monthly payments as are herein provided to be paid to the surviving widow, until the minor child, or minor children, reach the age of eighteen (18) years or shall have married; provided further that the payments herein provided for to be made to the beneficiaries shall not be made if the payments require an increase in the millage tax levy provided by section 11-1823, R.C.M. 1947.

(3) Payments as herein provided for, to be made to the minor child or children of police officers shall be paid to the duly appointed, qualified and acting guardian of the child or children, for the use of the minor, until the minor shall have reached the age of eighteen (18) years or shall have married and in case there is more than one (1) minor child, upon each child reaching the age of eighteen (18) years the prorata payments to the child shall cease and shall be made to the remaining minor child or children until the youngest child reaches the age of eighteen (18) years or is married.

(4) The term "policeman," or "police officer," includes all those on the reserve list, as well as "active police," "police officer," and "patrolman," or any of those terms.

(5) Before any payments are made to any member of the police reserve, the governing body of the city shall, forthwith, determine the eligibility of such member for payments and the amount thereof in accordance with the terms of this section."

Approved February 25, 1974

## CHAPTER NO. 36

AN ACT CHANGING THE ELIGIBILITY OF FIREMEN FOR RETIREMENT BENEFITS, AND AMENDING SECTIONS 11-1925, 11-1926, AND 11-1927, R.C.M. 1947.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 11-1925, R.C.M. 1947, is amended to read as follows:

"11-1925. **Pensions to retired firemen.** Each and every fire department relief association organized and existing under the laws of this state shall pay to each of its members who elect to retire from active service after having completed twenty (20) years or more of active duty and has reached the age of fifty (50) years as a fully paid member of a paid, or partly paid and partly volunteer fire department of the city or town wherein such association has been formed, out of any money in the association's "disability and pension fund," a "service pension" in an amount which shall be equal to one-half ( $\frac{1}{2}$ ) of the sum last received by the member as a monthly compensation, *excluding overtime and payments in lieu of sick leave and annual leave*, for his services as an active member of said fire department. However, effective July 1, 1974, and after an active member has completed twenty (20) years of service the pension of the member who serves or has served an additional one (1) to ten (10) years shall be increased at the rate of one per cent (1%) per year for each additional year of service completed, up to a maximum of sixty per cent (60%) of the last month's salary received as a monthly compensation for his services as an active member of said fire department; *provided that no member shall be eligible to receive a service pension prior to attaining the age of fifty (50) years.* However, the monthly compensation paid to members retiring on or after July 1, 1973, shall in no event become less than one-half ( $\frac{1}{2}$ ) the regular monthly salary paid, *excluding overtime and payments in lieu of sick leave and annual leave*, to a confirmed active fireman of that city as provided each and every year in the annual budget of that city. In case of volunteer men the compensation shall in no event exceed the sum of seventy-five dollars (\$75) per month.

A member of a pure volunteer fire department who has served twenty (20) years or more as an active member of such fire department, without qualifying as to any provisions pertaining to an attained age, shall be entitled to the benefits provided for by this act."



Section 2. Section 11-1926, R.C.M. 1947, is amended to read as follows:

"11-1926. **Disability pension.** Each and every fire department relief association, organized and existing under the laws of this state, shall pay a "disability pension," out of any moneys in the association's "disability and pension fund," to each and every member of said association who has become injured or disabled by reason of sickness or injury contracted or received in line of duty, in an amount which shall be equal to one-half ( $\frac{1}{2}$ ) of the sum last received as a monthly compensation, *excluding overtime and payments in lieu of sick leave and annual leave*, by such injured or disabled member for services rendered the fire department of the city or town wherein such association has been formed. However, effective July 1, 1974, and after *an active member has completed twenty (20) years of service the pension of the member who serves or has served an additional one (1) to ten (10) years shall be increased at the rate of one per cent (1%) per year for each additional year of service completed*, up to a maximum of sixty per cent (60%) of the last month's salary received as a monthly compensation, *excluding overtime and payments in lieu of sick leave and annual leave*, for his services as an active member of said fire department. However, the monthly compensation paid to members retiring on or after July 1, 1973, shall in no event become less than one-half ( $\frac{1}{2}$ ) the regular monthly salary paid to a confirmed active fireman of that city as provided each and every year in the annual budget of that city. In case of volunteer firemen such disability pension shall in no event exceed the sum of seventy-five (\$75) dollars per month."

Section 3. Section 11-1927, R.C.M. 1947, is amended to read as follows:

"11-1927. **Pensions to widows and orphans.** Each and every fire department relief association, organized and existing under the laws of this state, shall pay to the widow or orphans of a deceased member of said association, who, on the date of his decease, was an active member of the fire department in the city or town wherein such association has been formed, or had elected to retire from active service of said fire department and receive a "service pension" as provided for by section 11-1925, or prior to his decease had suffered a sickness or injury, and was receiving or was qualified to receive a "disability pension," as provided by section 11-1926, out of any money in relief association's "disability and pension fund," a monthly pension in an amount which shall be equal to one-half ( $\frac{1}{2}$ ) of the monthly compensation, *excluding overtime and payments in lieu of sick leave and annual leave*, last received by such deceased member for his services as an active member of the fire department in the city or town wherein such association has been formed. However, effective July 1, 1974, and after *an active member has completed twenty (20) years of service the pension of the member who serves or has served an additional one (1) to ten (10) years shall be increased at the rate of one per cent (1%) per year for each additional year of service completed*, up to a maximum of sixty per cent (60%) of the last month's salary received as a monthly compensation, *excluding overtime and payments in lieu of sick leave and annual leave*, for his services as an active member of said fire department. However, the monthly compensation paid to a

widow or orphan of an active member who becomes deceased after July 1, 1973, or an active member who elects to retire after July 1, 1973, shall in no event become less than one-half (½) the regular monthly salary paid to a confirmed active fireman of that city as provided each and every year in the annual budget of that city. Provided, that said pension shall be paid to the within named widow only so long as she remains unmarried, and further provided, that a widow of a deceased fireman shall not be entitled to the pension, provided for by this act, in those cases where the marriage was consummated after the fireman had elected to retire from active service and received a "service pension" as provided for by section 11-1925; or in those cases where the marriage was consummated after the fireman had qualified and was receiving a "disability pension" as provided for by section 11-1926. Provided further, that the pension herein provided for shall not be paid to the orphans of deceased firemen after they have attained the age of eighteen (18) years. In case of volunteer firemen such pension shall in no event exceed the sum of seventy-five (\$75) dollars per month."

Approved February 25, 1974

## CHAPTER NO. 37

AN ACT TO AMEND SECTIONS 26-1701, 26-1702, AND 26-1705, AND TO REPEAL SECTION 26-1703, R.C.M. 1947, PROVIDING FOR WRITTEN CERTIFICATION THAT THE IMPORTATION OR SOURCE OF LIVE OR DEAD SALMONID FISH OR EGGS IS FREE OF SUCH INFECTIOUS ORGANISMS AS THE STATE FISH AND GAME COMMISSION MAY SPECIFY; ELIMINATING THE INFORMATION REQUIRED IN THE CERTIFICATE, AND PROVIDING FOR QUARANTINE OF CARGOES AND VEHICLES VIOLATING THESE REQUIREMENTS.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 26-1701, R.C.M. 1947, is amended to read as follows:

"26-1701. **Importation of salmonid fish or eggs unlawful unless certified free of infectious organisms.** It is unlawful to bring live or dead salmonid fish or eggs into the state of Montana for any purpose unless such importations are shipped direct from the hatchery where reared to destination, and a written certification *is provided* that the importation or source is free of *such* infectious organisms as the state fish and game commission may specify. Such certification shall be made in the state of origin by a fish pathologist designated for this purpose by the United States secretary of the interior or by the state fish and game director. Certification of the source may be by inspection of the hatchery of origin conducted annually or at such other times as the state fish and game director may order. *A copy of the certification shall accompany each shipment.*"

Section 2. Section 26-1702, R.C.M. 1947, is amended to read as follows:

**"26-1702. Infectious organisms dead — certification unnecessary.** Nothing in this act shall restrict the importation and transportation of dead salmonid fish or eggs when such fish or eggs have been processed or prepared in a manner whereby such infectious organisms as the state fish and game commission may specify, have been killed. Salmon caught and brought directly into North America and transported into Montana for processing or sale, or any salmonid caught wild in North America shall be exempt from the requirement for certification."

Section 3. Section 26-1705, R.C.M. 1947, is amended to read as follows:

**"26-1705. Penalty — misdemeanor — quarantine — cooperation with department of highways.** Any person violating any provision of this act shall be deemed guilty of a misdemeanor and shall be punished as prescribed in section 26-324. *In addition, the cargo and vehicle in violation, at the option of the department of fish and game shall be either denied the right to proceed further within the state of Montana or quarantined until inspected by a designated biologist from the department of fish and game. The department shall inform the department of highways of the provisions regarding importation of salmonid fish and eggs, so that the department of highways may enforce such provisions at ports of entry and checking stations under section 32-2421.*"

Section 4. Section 26-1703, R.C.M. 1947, is repealed.

Approved February 25, 1974.

## CHAPTER NO. 38

AN ACT REVISING THE HEARING AND APPEAL PROCEDURES OF COUNTY TAX APPEAL BOARDS AND PROVIDING FOR THE COMPENSATION OF MEMBERS OF SUCH BOARDS, AND AMENDING SECTIONS 84-601, 84-604, 84-708, AND 84-709, R.C.M. 1947; AND PROVIDING FOR AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 84-601, R.C.M. 1947, is amended to read as follows:

**"84-601. County tax appeal board — when to hear protests.** The board of county commissioners of each county shall appoint a three (3) member county tax appeal board. The members of each tax appeal board shall be residents of the county in which they serve; they shall serve four (4) year terms and shall *effective July 1, 1973, receive compensation of twenty-five dollars (\$25) per day and travel expenses only when the county tax appeal board is in session to hear taxpayers appeals from property tax assessments or attending meetings called by the state tax appeal board.*

Travel expenses and *compensation* shall be paid from the appropriation to the state tax appeal board. *Office space and equipment for the county tax appeal boards shall be furnished by the county. All other incidental expenses will be paid from the appropriation of the state tax appeal board.* The first term shall run from July 1, 1973, through December 31, 1976. The county tax appeal board must meet on the third Monday of July in each year to hear protests concerning assessments made by the department of revenue. It must continue in session for that purpose from time to time until the business of hearing protests is disposed of, but not later than the second Monday in August. In connection with any such appeal, the county tax appeal board shall have the authority to change any assessment or fix the assessment at some other level."

Section 2. Section 84-604, R.C.M. 1947, is amended to read as follows:

"84-604. **Examination of applicant.** Before the county tax appeal board grants any application or makes any reduction applied for, it must examine on oath, the person or agent making the application, touching the value of the property of each person. No reduction must be made unless such person or agent makes an application, as provided in the preceding section, and attends and answers all questions pertinent to the inquiry. The testimony of all witnesses upon such hearing must be *taken in shorthand or by stenotype or electronically recorded* and preserved for one (1) year. *If the decision of the county tax appeal board is appealed, all testimony must be transcribed or otherwise reduced to writing and forwarded together with all exhibits to the state tax appeal board.* The date of hearing, the proceedings before the board, and the decision, must be entered upon the minutes of the board, and the board shall notify the applicant of its decision, by registered or certified mail within three (3) days thereafter. A copy of the minutes of the county tax appeal board must be transmitted to the state tax appeal board no later than three (3) days after the third Monday in August."

Section 3. Section 84-708, R.C.M. 1947; is amended to read as follows:

"84-708. **Powers and duties.** It shall be the duty of the state tax appeal board:

(1) To prescribe rules and regulations for the tax appeal boards of the different counties in the performance of their duties *and for this purpose may schedule meetings of county tax appeal boards, and it shall be the duty of all invited county tax appeal board members to attend if possible and the cost of their attendance shall be paid from the appropriation of the state tax appeal board;*

(2) To hear appeals from decisions of the county tax appeal boards;

(3) To hear appeals from decisions of the department of revenue in regard to business licenses, property assessments, taxes, and penalties.

(4) Hearings, witnesses, contempt, fees and subpoenas. Oaths to witnesses in any investigation by the state tax appeal board may be administered by a member of the board or his agent. In case any witness shall fail to obey any summons to appear before said board, or shall refuse to testify, or answer any material questions, or to produce records, books,

papers, or documents when required to do so, such failure or refusal shall be reported to the attorney general, who shall thereupon institute proceedings in the proper district court to punish the witness for such neglect or refusal. Any person who shall testify falsely in any material matter, under consideration by the board shall be guilty of perjury and punished accordingly. Witnesses attending shall receive like compensation as witnesses in the district court. Such compensation shall be charged to the proper appropriation for the board.

(5) The state tax appeal board shall also have the duties of an appeal board relating to such other matters as may be provided by law."

Section 4. Section 84-709, R.C.M. 1947, is amended to read as follows:

"84-709. **Appeal to state tax appeal board — hearing.** Any person, firm or corporation or the department of revenue in behalf of the state, or any municipal corporation, aggrieved by the action of any county tax appeal board, may appeal to the state board by filing with the county tax appeal board a notice of appeal, and a duplicate thereof with the state board, within ten (10) days after the *receipt of the decision* of the county board, which notice shall specify the action complained of and the reasons assigned for such complaint. The state board shall set such appeal for hearing either in its office in the capitol or such county seat as the board shall deem advisable to facilitate the performance of its duties or to accommodate parties in interest, and shall give to the appellant and to the county board at least five (5) days' notice of the time and place of such hearing; at the time of giving such notice the state board may require the county board to certify to it the minutes of the proceedings resulting in such action and all testimony taken in connection therewith, and the state board may, in its discretion, determine the appeal on such record or may hear further testimony. For the purpose of expediting its work the state board may refer any such appeal to one (1) of its members and the person so designated shall have and exercise all the powers of the board in conducting such hearings, and shall, as soon as possible thereafter, report the proceedings, together with a transcript of the testimony received, to the board and the state board shall determine such appeal on the record so made. On all hearings at county seats throughout the state, the state board or the member designated to conduct a hearing may employ the local court reporter or other competent stenographer to take and transcribe the testimony received, and the cost thereof may be paid out of the general appropriation for the board."

Section 5. This act shall be effective upon its passage and approval.

Approved February 25, 1974

## CHAPTER NO. 39

AN ACT AMENDING SECTION 46-1501, R.C.M. 1947, TO PERMIT JOINT HERD DISTRICTS WHICH CROSS TWO (2) OR MORE COUNTY LINES.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 46-1501, R.C.M. 1947, is amended to read as follows:

**"46-1501. Herd districts — creation, size, location — dissolution — exclusion of government land — records.** (a) Herd districts may be created in any county in the state of Montana to contain twelve (12) square miles or more, lying not less than one (1) mile in width, outside of the incorporated cities; excepting only that herd districts may be created containing not less than six (6) nor more than fifty-four (54) square miles, lying not less than two (2) miles in width, when such territory joins and is contiguous with the boundaries of a city having a population of ten thousand (10,000) or more and such territory so to be created in a herd district has a suburban population of not less than two hundred (200) people; upon petition of owners or possessors of fifty-five per centum (55%) of the land in such district, and providing twenty-five per centum (25%) or more of the land in such district is in actual cultivation, or being used for residential purposes.

In formation of such a district the entire holding of any owner or lessee must be included unless such owner or lessee consent that less than his entire contiguous holdings be included in the petition. And such petition shall designate the months of the year when herd district is effective, and upon presentation and filing of such petition, properly signed, giving outside boundaries and description of proposed district and the post-office address of the signers thereto, with the clerk and recorder in the county in which the said district is being created, the county commissioners of such county, upon receipt thereof, shall set a date for hearing protests and verifying the signatures thereto, and shall give not less than twenty (20) days' notice of the same by three (3) publications in a newspaper of general circulation in the county of the proposed district. At the hearing held pursuant to such notices the county commissioners shall examine the petition and shall cause a map to be made in order to determine the shape and regularity of the boundaries of the proposed district. The said commissioners may then establish the district, but such district shall be established only in such manner that the district will be reasonably regular and symmetrical in shape, or practicable in relation to the geographical features of such district.

Should it appear to such county commissioners after such hearing that the signatures attached to such petition were genuine, they shall immediately declare such herd district created and established; after which the county commissioners must give notice by four (4) weekly publications in some newspaper nearest the district of the creation of such districts, also stating period such districts will be in effect, and such districts shall not be in effect until thirty (30) days have expired after the order. Upon petition of any owner or possessor of lands lying contiguous and adjoining any herd district theretofore created, and upon like hearing and notice as hereinabove provided for, such lands shall be included in said herd district and become a part thereof. Should the signature of lessee appear on the petition creating or abolishing any herd district, the owner or owners of said land may appear either in person or agent and enter their

protest. And the board of county commissioners shall remove the name of the lessee from said petition, and no person shall be permitted to withdraw his name after the hour set for hearing same.

(b) When a petition praying that any established herd district be dissolved is filed with the county clerk and recorder of the county wherein such district has been established, and it is set forth therein that such petition is signed by the owners or possessors of fifty-five per cent (55%), or more of the lands lying within such district, and that less than twenty-five per cent (25%) of the lands included in such district is in actual cultivation, the said county clerk and recorder shall call such petition to the attention of the board of county commissioners of the county at its next regular meeting; and at said meeting by its order the said board shall set such petition for hearing at a specified time on a day certain of which notice shall be given by publication at least once in each week for three (3) successive weeks in some newspaper of general circulation in the county.

At the time fixed for hearing the board of county commissioners shall first require proof of publication of the notice of said hearing to be made and thereafter shall consider the petition and hear all interested parties. At the conclusion of any such hearing if the board of county commissioners shall find that notice of hearing has been given in the manner and for the time prescribed herein and that the owners or possessors of fifty-five per cent (55%), or more of the lands lying within such herd district have signed the petition and request that such district be dissolved, and that less than twenty-five per cent (25%), of the lands included in such district are in actual cultivation, then the said board shall forthwith spread such findings upon its minutes and thereupon shall enter an order in terms that by reason of such findings and of the proceedings had upon such petition the said herd district is thereby dissolved. Forthwith upon the making and entry of any such order aforesaid the herd district affected thereby shall be dissolved for all purposes thereafter.

(c) Any tract of land embraced within any established herd district and which contains eighteen (18) government sections of land, or more, so located that at least one-fourth ( $\frac{1}{4}$ ) of the perimeter of such tract coincides with the existing boundaries of such herd district, may be excluded therefrom upon proceedings had before the board of county commissioners of the county wherein the said district has been established on a like petition, notice and hearing and by a like order as in the case of proceedings for dissolving herd districts; provided that when the exclusion of any such tract of land from an existing herd district is sought the petition shall describe the tract to be excluded with common certainty and shall set forth that it is signed by the owners or possessors of fifty-five per cent (55%), or more of the lands lying within the boundaries of the tract to be excluded, and that less than fifteen per cent (15%), of the lands included in such tract is in actual cultivation; and provided further that in any such case if the board of county commissioners at the conclusion of the hearing had shall find that the tract of land to be excluded conforms to the requirements of this section and that the allegations of the petition are true its findings to that effect shall be spread upon the minutes and the board shall thereupon enter its order in terms that by reason of such

findings and of the proceedings had upon such petition the tract of land described in the petition which shall be further set forth with common certainty in the order is thereby excluded from such herd district for all purposes thereafter. Forthwith upon the making and entry of any such order of exclusion the tract of land therein described shall be deemed for all purposes thereafter to be excluded from and to form no part of the herd district affected thereby.

*(d) Herd districts may be created jointly between any two (2) or more counties of the state of Montana where the lands to be included in the district meet the requirements of this section and either extend across county boundaries under one (1) ownership or are contiguous to the land of owners in the adjoining county wishing to participate in the herd district. The county commissioner boards of each county desiring to participate in a joint herd district shall comply with all the provisions of this section dealing with single-county districts. A joint herd district shall be created only after approval by all county commissioner boards of participating counties as provided for single-county herd districts in this section. Joint herd districts may be dissolved in the same manner as single-county herd districts."*

Approved February 25, 1974

## CHAPTER NO. 40

AN ACT TO AMEND SECTION 16-2420, R.C.M. 1947, TO REQUIRE THE BOARDS OF COUNTY COMMISSIONERS TO DESIGNATE CLASS OF COUNTY ANNUALLY.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 16-2420, R.C.M. 1947, is amended to read as follows:

"16-2420. **County commissioners to designate class.** The several boards of county commissioners must, at their regular session in September of each year, make an order designating the class to which such county belongs, as determined by the taxable valuation of such county for the year in which such order is made, under and in accordance with the provisions of section 16-2419, provided that such classification shall not change the government of the county then in existence until the first Monday in January next succeeding."

Approved February 25, 1974

## CHAPTER NO. 41

AN ACT TO AMEND SECTIONS 59-1402 AND 59-1404, R.C.M. 1947,



TO PROVIDE FOR THE SUBMISSION OF SALARY RECOMMENDATIONS PRIOR TO EACH FIRST REGULAR SESSION OF THE BIENNIUM; AND TO AMEND SECTION 59-1401, R.C.M. 1947.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 59-1401, R.C.M. 1947, is amended to read as follows:

**"59-1401. Creation of commission — composition — terms — vacancies.** (1) There is created a Montana salary commission. The commission is composed of eight (8) members, none of whom may be public officers, either elected or appointed. The commission shall be appointed in the following manner and in the following chronological order:

(a) First, the governor shall appoint one (1) member from each of the two (2) major political parties, equally divided between the United States congressional districts;

(b) Next, the supreme court shall appoint one (1) member from each of the two (2) major political parties, equally divided between the United States congressional districts;

(c) Next, the majority floor leader of the senate shall appoint one (1) member from his political party. The minority leader of the senate shall then appoint one (1) member from his political party not from the same United States congressional district as the member appointed by the presiding officer;

(d) Next, the presiding speaker of the house of representatives shall appoint one (1) member from his political party. Lastly, the minority leader in the house of representatives shall appoint one (1) member from his political party not from the same United States congressional district as the member appointed by the speaker.

All appointments shall be made not later than the 60th legislative day.

(2) Commission members shall serve a term of four (4) years. In the event a vacancy occurs on the commission, the appointing authority of the vacated seat shall designate a successor."

Section 2. Section 59-1402, R.C.M. 1947, is amended to read as follows:

**"59-1402. Meetings of commission — quorum — compensation.** (1) The commission shall hold at least two (2) meetings before *submitting a report to the legislative assembly as provided in section 59-1404.*

(2) All meetings shall be called by the chairman of the commission, and notice of the meeting dates shall be given by mail to each commission member at least twenty (20) days before the day scheduled for the meeting.

(3) A majority of members present at any meeting is sufficient to transact any business to come before the meeting; however, a majority

of all commission members is necessary to ratify the commission's recommendations to the legislature.

(4) Commission members shall be reimbursed from the appropriation to the office of the legislative council for their actual and necessary expenses incurred, and twenty-five dollars (\$25) per day while attending meetings of the commission.

(5) The commission shall choose one (1) of its members as chairman at its initial meeting, and the executive director of the legislative council or his delegate shall serve as secretary to the commission and shall record and transcribe all minutes of commission meetings and prepare all correspondence, notices, and formal recommendations as directed by the chairman."

Section 3. Section 59-1404, R.C.M. 1947, is amended to read as follows:

**"59-1404. Commission meetings and recommendations — submission.** *The commission shall hold its meetings in the year prior to each first regular session of the biennium.* On or before November 15 prior to *each first regular session of the biennium*, the commission shall submit its formal written recommendations for the level and form of compensation to be paid to the judiciary and the elective members of the legislative and executive branches to each member of the legislative assembly, to each member of the judiciary, and each elective member of the executive branch, for review and consideration. A commission member who does not concur in the proposed recommendation may submit his written objections thereto with the formal recommendations submitted by the commission."

Approved February 26, 1974

## CHAPTER NO. 42

AN ACT AMENDING SECTIONS 79-1012 AND 82A-202, R.C.M. 1947, AND RE-ESTABLISHING THE POSITION OF BUDGET DIRECTOR WITHIN THE OFFICE OF THE GOVERNOR; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 79-1012, R.C.M. 1947, is amended to read as follows:

**"79-1012. Governor chief budget officer — appointment of budget director.** The governor shall be the chief budget officer of the state *and shall appoint a director of the budget, who shall hold office at the pleasure of the governor, and whose duty it shall be to carry out provisions of this chapter.*"

Section 2. Section 82A-202, R.C.M. 1947, is amended to read as follows:

**"82A-202. Agencies abolished — functions transferred to department.** (1) The department of administration and its units, created in Title 82, chapter 33, R.C.M. 1947, including the state purchasing department created in Title 82, chapter 19, R.C.M. 1947, are abolished, and their functions, except the functions contained in Title 69, chapter 21, R.C.M. 1947 (pertaining to building construction standards), transferred to the department of justice in chapter 12 of this act, are transferred to the department of administration created in this chapter. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the department of administration or its units or the state purchasing department, except the references contained in Title 69, chapter 21, R.C.M. 1947, means the department of administration created in this chapter.

(2) The office of state controller, created in Title 82, chapter 1, R.C.M. 1947, and the position of the state purchasing agent, created in Title 82, chapter 19, R.C.M. 1947, are abolished, and their functions, except the functions contained in Title 69, chapter 21, R.C.M. 1947 (pertaining to building construction standards), transferred to the department of justice in chapter 12 of this act, are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state controller or state purchasing agent, except the references contained in Title 69, chapter 21, R.C.M. 1947, means the department of administration created in this chapter.

(3) The state board of review, created in Title 79, chapter 24, R.C.M. 1947, is abolished, and its functions are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state board of review means the department of administration created in this chapter.

(4) The Montana highway patrolmen's retirement board, created in Title 31, chapter 2, R.C.M. 1947, is abolished, and its functions, except the quasi-judicial functions transferred to the board of administration in section 82A-211 of this chapter, are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana highway patrolmen's retirement board, except the references relating to the quasi-judicial functions transferred to the board of administration in section 82A-211 of this chapter, means the department of administration created in this chapter.

Section 3. This act is effective upon passage and approval.

Approved February 26, 1974

## CHAPTER NO. 43

AN ACT AMENDING SECTION 16-2618, R.C.M. 1947, RELATING TO DEPOSIT OF PUBLIC FUNDS BY COUNTY, CITY AND TOWN TREASURERS.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 16-2618, R.C.M. 1947, is amended to read as follows:

**"16-2618. Deposit of public funds by county, city and town treasurers.** (1) It shall be the duty of all county, city and town treasurers to deposit all public moneys in their possession and under their control in any solvent banks, *building and loan associations or savings and loan associations* located in the county, city or town of which such treasurer is an officer, subject to national supervision or state examination as the board of county commissioners in the case of a county, or of the council in the case of a city or town, may designate, and no other. The treasurer shall take from such bank, *building and loan association or savings and loan association* such security as the board of county commissioners, in the case of a county, or the council in the case of a city or town, may prescribe, approve and deem fully sufficient and necessary to insure the safety and prompt payment of all such deposits, together with the interest on any time or savings deposits, provided that said board of county commissioners or city or town council is hereby authorized to deposit such public moneys not necessary for immediate use by such county, city or town with any bank, *building and loan association or savings and loan association* authorized herein above in a savings or time deposit; *provided that the bank or banks or building and loan association or savings and loan association in which the money is deposited shall pay on the moneys no less than the rate of interest as is paid on money from private sources on the same terms. Refusal of any bank, building and loan association or savings and loan association to pay said interest rate shall constitute a waiver of that institution's right to participate in the ratable distribution of said moneys as set forth in subsection (4) of this act,* and provided that said board of county commissioners, or city or town council is hereby authorized to invest such public moneys not necessary for immediate use by such county, city or town, in direct obligations of the United States government, payable within not to exceed one hundred eighty (180) days from the time of such investment.

(2) Said board of county commissioners, city or town council may require security for only any such portion of deposits as is not guaranteed or insured according to law. Such security shall consist of cashier's check or checks issued by the Federal Reserve Bank, bonds of the United States government and its dependents, bonds guaranteed by the United States government or its dependents, bonds and warrants of the state of Montana, bonds and warrants of any county of the state of Montana, and bonds of any city, town or school district of the state of Montana, which are a general obligation of such county, city, town or school district, bonds of the Federal Land Banks, Federal Intermediate Credit Bank debentures, Federal Home Loan Bank notes and bonds, Bank for Co-operatives' debentures, Federal National Mortgage Association notes, bonds and guaranteed certificates of participation, obligations of or fully guaranteed by the Government National Mortgage Association, Farmers' Home Administration insured notes, notes fully guaranteed as to principal and interest by the Small Business Administration, Federal Housing Administration debentures, general obligation bonds of other states and counties of other

states and bonds issued in the United States of America, which are quoted on the New York market which shall be acceptable at not to exceed ninety per centum (90%) of such market quotation.

(3) When negotiable securities are furnished, such securities may be placed in trust and the trustee's receipt may be accepted in lieu of the actual securities when such receipt is in favor of the treasurer, his successors and the state of Montana, and the form of receipt and the trustee have been approved by the state examiner. All warrants or other negotiable securities must be properly assigned or endorsed in blank. It shall be the duty of the board of county commissioners in the case of county funds, or the council in the case of funds of a city or town, upon the acceptance and approval of any of the above-mentioned bonds or securities, to make a complete minute entry of such acceptance and approval upon the record of their proceedings, and such bonds and securities shall be reapproved at least quarter annually thereafter.

*(4)(a) Demand deposits shall be placed only in banks. When more than one bank is available in any county, for the deposit of such county funds, or in any city or town for the deposit of such city or town funds, such demand deposits shall be distributed ratably among all of such banks qualifying therefor, substantially in proportion to paid-in capital and surplus of each such bank willing to receive such demand deposits under the terms of this act, and it shall be the duty of said county, city or town treasurer to prorate all such demand deposits among all of the banks qualified to receive the same as in this act provided, to the end that an equitable distribution of such demand deposits shall be maintained.*

*(b) Such public moneys not necessary for immediate use by such county, city or town which are not invested in direct obligations of the United States government as authorized herein shall be placed in time or savings deposits with any bank, building and loan association or savings and loan association in the county, city or town. When more than one bank, building and loan association or savings and loan association is available in any county, for the deposit of such county funds, or in any city or town for the deposit of such city or town funds, such funds shall be distributed ratably among all of such banks, building and loan associations and savings and loan associations qualifying therefor, substantially in proportion to the total property taxes paid in such county or the county in which such city or town is located during the preceding year, including taxes on shares of bank stock, by each such bank, building and loan association or savings and loan association willing to receive such time or savings deposits under the terms of this act, and it shall be the duty of said county, city or town treasurer to prorate all such time or savings deposits among all of the banks, building and loan associations and savings and loan associations qualified to receive the same as in this act provided, to the end that an equitable distribution of such time or savings deposits shall be maintained.*

(5) Whenever it shall come to the attention of the state examiner that the funds of any county, city or town are not properly distributed as provided in this act, the state examiner shall order the treasurer of such county, city or town to distribute said funds in accordance herewith, and if such treasurer shall refuse or neglect to comply with such order, it shall

be the duty of the state examiner to institute proceedings against such treasurer at the cost of the county, city or town of which such treasurer is an officer, on the official bond of such treasurer. If no such bank, *building and loan associations or savings and loan associations* exists in the county, city or town, or if any banks, *building and loan associations or savings and loan associations* existing therein fails or refuses to qualify under the terms of this act to receive such deposits, then and in such case, or in either of such cases, such moneys as have not been accepted by any banks, *building and loan associations or savings and loan associations* within said county, city or town, shall be deposited under the terms of this act, in the banks, *building and loan associations or savings and loan associations* most convenient to such county, city or town, willing to accept such deposits under the terms of this act, and qualified as above provided. Any banks, *building and loan associations or savings and loan associations* receiving such deposits, shall, through its president and cashier or secretary, make a statement quarter annually of account, under oath, showing all such moneys that have been deposited with such bank, *building and loan association or savings and loan association* during the quarter, the amount of daily balance in dollars, and the amount of interest by such banks, *building and loan associations or savings and loan associations* credited or paid therefor, and showing that neither such bank, *building and loan association or savings and loan association* nor any officer thereof, nor any person for it, has paid or given any consideration or emolument whatsoever to the treasurer or to any other person other than the interest provided for herein, for or on account of the making of such deposits, with any such bank, *building and loan association or savings and loan association*. All such deposits shall be subject to withdrawal by the treasurer in such amounts as may be necessary from time to time, and no deposit of funds shall be made, or permitted to remain in any bank, *building and loan association or savings and loan association*, until the security for such deposits shall have been first approved by the board of county commissioners in the case of county funds, or by the council in the case of city or town funds, and delivered to the treasurer.

(6) Except as provided in subsection (8) of this section, all interest paid and collected on such deposits or investments shall be credited to the general fund of the county, city or town to whose credit such funds are deposited. Where moneys shall have been deposited in accordance with the provisions of this act, the treasurer shall not be liable for loss on account of any such deposit that may occur through damage by the elements or for any other cause or reason occasioned through means other than his own neglect, fraud, or dishonorable conduct.

(7) Any bank, *building and loan association or savings and loan association* pledging securities as provided in this act at any time it deems advisable or desirable may substitute like securities for all or any part of the securities pledged. The collateral so substituted shall be approved by the governing body of the county, city or town at its next official meeting. Such securities so substituted shall at the time of substitution be at least equal in principal amount to the securities for which substitution is made. In the event that the securities so substituted are held in trust, the trustee shall, on the same day the substitution is made, forward by

registered or certified mail to the county, city or town and to the depository bank, *building and loan association or savings and loan association*, a receipt specifically describing and identifying both the securities so substituted and those released and returned to the depository bank, *building and loan association or savings and loan association*.

(8) Whenever in the judgment of the trustees of any common school district, high school district, or county high school it would be advantageous to invest any money of such school or school district in savings or time deposits in a state or national bank, *building and loan association or savings and loan association* insured by the F.D.I.C. or the F.S.L.I.C., or in direct obligations of the United States government, payable within one hundred eighty (180) days from the time of investment, such governing body may in its discretion direct the county treasurer to make such investments. All interest collected on such deposits or investments shall be credited to the fund from which the money was withdrawn, provided that nothing in this act shall be interpreted to conflict with section 16-2050."

Approved February 26, 1974

## CHAPTER NO. 44

AN ACT TO DELETE THE REQUIREMENT THAT INTERIM STUDY REPORTS BE SUBMITTED TO THE FULL STANDING COMMITTEES PRIOR TO EACH LEGISLATIVE SESSION BY AMENDING 43-716, R.C.M. 1947.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 43-716, R.C.M. 1947, is amended to read as follows:

"43-716. **Appointment of subcommittees — composition — functions — resignation for failure to attend meetings or hearings.** (1) The standing committees of the house and senate shall appoint subcommittees from each body to meet jointly on those bills and resolutions as designated to them by the priorities committee. The subcommittees shall be composed as follows:

(a) four (4) members of the house standing committee appointed by the chairman of the standing committee, no more than two (2) of whom may be of one political party; and

(b) four (4) members of the senate standing committee appointed by the chairman of the standing committee, no more than two (2) of whom may be of one political party.

(2) The chairman of the standing committee may appoint himself to the subcommittee.

(3) The subcommittee shall elect its chairman and vice-chairman from among its members. The chairman and vice-chairman may not be members of the same political party.

(4) The subcommittees may perform their functions when the legislature is not in session and the personnel, data and facilities of the legislative council shall be made available to such subcommittees.

(5) The subcommittees shall accumulate, compile, analyze and furnish such information bearing upon any matters relating to existing or prospective legislation as may be determined by it upon its own initiative pertaining to important issues of policy and questions of statewide importance, including but not limited to investigation and study of the possibilities of consolidations of departments, commissions, boards and institutions in state government for the elimination of unnecessary activities and duplications in office personnel and equipment, for the co-ordination of activities, for the purpose of increasing efficiency of service or effecting economies, and for the purpose of studying and inquiring into the financial administration of state governments and subdivisions thereof, including the problems of assessment and collection of taxes, and all other matters pertaining to the function of all departments and branches of state government.

(6) The subcommittees shall prepare such bills and resolutions as in its opinion the welfare of the state may require for presentation to the next regular session of the legislative assembly.

(7) Any subcommittee appointed for the purpose of considering deferred bills may make recommendations regarding the disposition of such bills. Prior to the next session, these recommendations *may* be submitted to the standing committee having jurisdiction over the bill when the preceding session was adjourned. After having considered the subcommittee recommendations the standing committee may perfect a committee report on the bill to be presented to the legislature on the first legislative day of the next session.

(8) Any subcommittee appointed for the purpose of making a study assigned by the priorities committee may make recommendations for legislation. These recommendations and the study report shall be submitted to the legislature at the session designated by the resolution or the priorities committee.

(9) If any subcommittee member should miss more than two (2) committee meetings or hearings without just cause when the legislature is not in session, the member is deemed to have resigned and the vacancy shall be filled in the same manner as the original appointment. Any other vacancy shall be filled in the same manner."

Approved February 26, 1974

## CHAPTER NO. 45

AN ACT REPEALING SECTION 4-171, R.C.M. 1947, RELATING TO THE SALE OF MATERIAL BRANDED AS LIQUOR.

*Be it enacted by the Legislature of the State of Montana:*



Section 1. Section 4-171, R.C.M. 1947, is repealed.

Approved February 26, 1974

## CHAPTER NO. 46

AN ACT PROHIBITING AN EMPLOYER, EXCEPT LAW ENFORCEMENT AGENCIES, FROM REQUIRING AN EMPLOYEE OR PROSPECTIVE EMPLOYEE TO TAKE A MECHANICAL LIE DETECTOR TEST AS A CONDITION OF OBTAINING OR CONTINUING EMPLOYMENT; PROVIDING A PENALTY; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Lie detector tests — when prohibited.** No person, firm, corporation or other business entity or representative thereof, shall require as a condition for employment or continuation of employment any person to take a polygraph test or any form of a mechanical lie detector test. A person who violates this section is guilty of a misdemeanor.

Section 2. This act shall not apply to public law enforcement agencies.

Section 3. This act is effective upon its passage and approval.

Approved February 26, 1974

## CHAPTER NO. 47

AN ACT TO AMEND SECTION 82A-1014, R.C.M. 1947, TO CLARIFY THE METHOD OF APPOINTMENT TO THE BOARD OF PERSONNEL APPEALS.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 82A-1014, R.C.M. 1947, is amended to read as follows:

"82A-1014. **Board of personnel appeals created.** (1) There is created a board of personnel appeals.

(2) The board is allocated to the department of labor and industry for administrative purposes only as prescribed in section 82A-108.

(3) The board consists of five (5) members appointed by the governor. Two (2) members shall represent management, two (2) members shall represent employees or employee organizations of the state, and one (1) member shall represent a neutral position.

(4) Any employee or his representative affected by the operation of this act is entitled to file a complaint with the board and to be heard, under the provisions of a grievance procedure to be prescribed by the board. The board may instruct the department to take corrective action that may be necessary to resolve grievances that are found to be legitimate.

(5) *The board is designated a quasi-judicial board for purposes of section 82A-112."*

Approved February 26, 1974

## CHAPTER NO. 48

AN ACT TO AMEND SECTION 26-809, R.C.M. 1947, TO REMOVE INCONSISTENCY WITH SECTION 26-811, R.C.M. 1947.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 26-809, R.C.M. 1947, is amended to read as follows:

"26-809. **Bag limit prizes for game or fish taken unlawful — exception.** That it shall be unlawful for any person, firm, corporation, association or club to offer or give any prize, gift or anything of value in connection with, or as a bag limit prize for, the taking, capturing, killing or in any manner acquiring any game, fish, fowl, fur-bearing animals, or any fish, bird or animal now, or that shall be hereafter, protected in any way by the fish and game laws of the state of Montana.

This act shall not be construed to prohibit the award of prizes for any one game bird, fish or fur-bearing animal on the basis of size, quality, or rarity."

Approved February 26, 1974

## CHAPTER NO. 49

AN ACT AMENDING SECTION 84-302, R.C.M. 1947, RELATING TO THE BASIS FOR IMPOSITION OF PROPERTY TAXES ON THE VARIOUS CLASSES OF TAXABLE PROPERTY IN MONTANA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 84-302, R.C.M. 1947, is amended to read as follows:

"84-302. **Basis for imposition of taxes.** As a basis for the imposition

of taxes upon the different classes of property specified in the preceding section, a percentage of the true and full value of the property of each class shall be taken as follows:

Class 1. One hundred per cent (100%) of its true and full value.

Class 2. Twenty per cent (20%) of its true and full value.

Class 3. Thirty-three and one-third per cent (33  $\frac{1}{3}$ %) of its true and full value.

Class 4. Thirty per cent (30%) of its true and full value.

Class 5. Seven per cent (7%) of its true and full value.

Class 6. *As specified in section 84-308, R.C.M. 1947.*

Class 7. Seven per cent (7%) of its true and full value.

Class 8. Fifteen per cent (15%) of its true and full value.

Class 9. Forty per cent (40%) of its true and full value."

Section 2. This act is effective on its passage and approval.

Approved February 27, 1974

## CHAPTER NO. 50

AN ACT TO AMEND SECTION 84-901, R.C.M., 1947, REGARDING ASSESSMENT OF UTILITIES TO INCLUDE MICROWAVE COMPANIES; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 84-901, R.C.M. 1947, is amended to read as follows:

"84-901. **Officers of certain telegraph, telephone, electric power and other lines to furnish statement to state department of revenue.** The president, secretary, or managing agent, or such other officer as the state department of revenue may designate, of any corporation, and each person or association of persons owning or operating a telegraph, telephone, *microwave*, electric power or transmission line, natural gas pipeline, oil pipeline, canal, ditch, flume, or other property, other than real estate not included in right of way, and which constitute a single and continuous property throughout more than one county, must, on or before the first Monday of March in each year, furnish the state department of revenue a statement, signed and sworn to by one of such officers or by the person or one of the persons forming such association, showing in detail for the year ending on the thirty-first day of December, immediately preceding, as follows:

1. The whole number of miles of said property in the state, and where the property is partly out of the state, the whole number of miles without

the state and the whole number of miles within the state owned or operated by such corporation, person, or association.

2. The total value of the entire property and plant both within and without the state, and the total value of that portion of the same within the state.

3. A complete description of the property within the state, giving the points of entrance into and the points of exit from the state, and the points of entrance into and the points of exit from each county, with a statement of the total number of miles in each county in the state.

4. Such other information regarding such property as may be required by the state department of revenue."

Section 2. This act is effective upon its passage and approval.

Approved February 27, 1974

## CHAPTER NO. 51

AN ACT DELETING REFERENCE TO A DEPARTMENT OF EDUCATION IN TITLE 82A AND INSERTING IN LIEU THEREOF REFERENCE TO THE STATE BOARD OF EDUCATION; RE-ESTABLISHING THE GOVERNANCE AUTHORITY FOR THE STATE HISTORICAL SOCIETY, THE MONTANA ARTS COUNCIL AND THE STATE LIBRARY COMMISSION AND PROVIDING FOR THEIR RELATIONSHIP TO THE STATE BOARD OF EDUCATION; AMENDING SECTIONS 82A-104, 82A-110, 82A-501, 82A-502, 82A-507, 82A-508, 82A-509, 82-3603 AND 82-3605; AND REPEALING SECTIONS 82A-503, 82A-504, 82A-505, 82A-506 AND 82A-510, R.C.M. 1947.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. It is the intent of this act to comply with the spirit of executive reorganization and yet to acknowledge that departmentalization as set forth in the executive reorganization act of 1971 is incompatible with the constitutional and statutory structure for governance of Montana's educational and cultural entities.

Section 2. Section 82A-104, R.C.M. 1947, is amended to read as follows:

"82A-104. **Structure of executive branch of state government.** (1) In accordance with the constitution, all executive and administrative offices, boards, commissions, agencies, and instrumentalities of the executive branch of state government, and their respective functions, are allocated by this title among and within the following departments *or entities*:

(a) Department of administration.

- (b) Department of agriculture.
- (c) Department of business regulation.
- (d) *State board of education.*
- (e) Department of fish and game.
- (f) Department of health and environmental sciences.
- (g) Department of highways.
- (h) Department of institutions.
- (i) Department of intergovernmental relations.
- (j) Department of labor and industry.
- (k) Department of justice.
- (l) Department of livestock.
- (m) Department of military affairs.
- (n) Department of natural resources and conservation.
- (o) Department of professional and occupational licensing.
- (p) Department of public service regulation.
- (q) Department of revenue.
- (r) Department of social and rehabilitation services.
- (s) Department of state lands.

(2) For its internal structure, each department shall adhere to the following standard terms:

(a) The principal unit of a department is a "division." Each division shall be headed by an "administrator."

(b) The principal unit of a division is a "bureau." Each bureau shall be headed by a "chief."

(c) The principal unit of a bureau is a "section." Each section shall be headed by a "supervisor."

Section 3. Section 82A-110, R.C.M. 1947, is amended to read as follows:

**"82A-110. Creation of advisory councils.** (1) A department head or the governor may create advisory councils. An official of the executive branch of state government other than a department head or the governor, including the superintendents of the state's institutions and the presidents of the units of the state's university system, or an agency, may also create advisory councils, but only if federal law or regulation requires that such official or agency create the advisory council as a condition to the receipt of federal funds.

(2) Each advisory council created under this section shall be known as the ".... advisory council."

(3) The creating authority shall prescribe the composition and advisory functions of each advisory council created; appoint its members, who shall serve at the pleasure of the governor; and specify a date when the existence of each advisory council ends.

(4) Advisory councils may be created only for the purpose of acting in an advisory capacity as defined in section 82A-103 (7).

(5) Unless he is a full-time salaried officer or employee of this state or of any political subdivision of this state, each member is entitled to be paid in an amount to be determined by the department head, not to exceed twenty-five dollars (\$25) for each day in which he is actually and necessarily engaged in the performance of council duties, and he is also entitled to be reimbursed for actual and necessary expenses incurred while in the performance of council duties. Members who are full-time salaried officers or employees of this state or of any political subdivision of this state are not entitled to be compensated for their service as members, but are entitled to be reimbursed for their actual and necessary expenses.

(6) Unless otherwise specified by the creating authority, at its first meeting in each year each advisory council shall elect a chairman and such other officers as it considers necessary.

(7) Unless otherwise specified by the creating authority, each advisory council shall meet at least annually and shall also meet on the call of the creating authority or the governor, and may meet at other times on the call of the chairman or a majority of its members. An advisory council may not meet outside the city of Helena without the express prior authorization of the creating authority.

(8) A majority of the membership of an advisory council constitutes a quorum to do business.

(9) Except as provided in subsection (10) of this section, an advisory council may not be created or appointed by a department head or any other official without the approval of the governor. In order for the creation or approval of the creation of an advisory council to be effective, the governor must file in his office and in the office of the secretary of state a record of the council created showing the council's:

- (a) Name, in accordance with subsection (2) of this section.
- (b) Composition.
- (c) Names and addresses of the appointed members.
- (d) Purpose.
- (e) Term of existence, in accordance with subsection (11) of this section.

(10) The board of *public education*, the *board of regents of higher education*, the *state board of education*, the attorney general, and the superintendent of public instruction may create advisory councils, which shall serve at their pleasure, without the approval of the governor. They must file a record of each council created by them in the office of the governor

and the office of the secretary of state in accordance with subsection (9) of this section.

(11) An advisory council may not be created to remain in existence longer than two (2) years after the date of its creation or beyond the period required to receive federal or private funds, whichever occurs later, unless extended by the governor, or by the board of *public* education, or by the *board of regents of higher education*, or by the *state board of education*, or by the attorney general, or by the superintendent of public instruction for those advisory councils created in the manner set forth in subsection (10) of this section. If the existence of an advisory council is extended, they shall specify a new date, not more than two (2) years later, when the existence of the advisory council ends, and file a record of the order in the office of the governor and the office of the secretary of state. The existence of any advisory council may be extended as many times as necessary."

Section 4. Section 82A-501, R.C.M. 1947, is amended to read as follows:

"82A-501. **State board of education.** The state board of education is created in article X, section 9, *subsection (1)* of the Montana constitution and is provided for in Title 75, *chapter 56*, R.C.M. 1947."

Section 5. There is a new section to be numbered 82A-501.1, R.C.M. 1947, which reads as follows:

82A-501.1. **Allocation to the state board of education.** The state historical society, the Montana arts council, and the state library commission are allocated to the state board of education for purposes of planning and coordination. Budget requests to the state for these agencies shall be included with the budget requests of the state board of education; however, the governance, management, and control of the respective agencies shall be vested respectively in the board of trustees of the state historical society, in the Montana arts council, and in the state library commission.

Section 6. Section 82A-502, R.C.M. 1947, is amended to read as follows:

"82A-502. **Agencies abolished — functions transferred to co-operative extension service.** (1) The position of state entomologist of Montana, provided for in Title 82, chapter 8, R.C.M. 1947, is abolished, and the functions of the position are transferred to the co-operative extension service. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state entomologist means the co-operative extension service.

(2) The position of state apiarist, provided for in Title 82, chapter 8, R.C.M. 1947, is abolished, and the functions of the office, except the functions contained in section 82-806, subsections 1 through 4, and section 82-807(11), R.C.M. 1947 (pertaining to enforcing the apiary laws), transferred to the department of agriculture in chapter 3 of this act, are transferred to the co-operative extension service. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state

apiarist, except the references in section 82-806, subsections 1 through 4, and section 82-807(11), R.C.M. 1947, means the co-operative extension service."

Section 7. Section 82A-507, R.C.M. 1947, is amended to read as follows:

**"82A-507. Board of trustees of state historical society — continued.** (1) The board of trustees of the state historical society, created in Title 44, chapter 5, R.C.M. 1947, is continued.

(2) *The composition, method of appointment, terms of office, compensation, reimbursement, and qualifications of board members remain as prescribed by law.*"

Section 8. Section 82A-508, R.C.M. 1947, is amended to read as follows:

**"82A-508. Montana arts council.** (1) The Montana arts council, created in Title 82, chapter 36, R.C.M. 1947, and its functions are continued.

(2) *The composition, method of appointment, terms of office, compensation, reimbursement, and qualifications of council members remain as prescribed by law.*"

Section 9. Section 82A-509, R.C.M. 1947, is amended to read as follows:

**"82A-509. State library commission — continued.** (1) The state library commission, created in Title 44, chapter 1, R.C.M. 1947, and its functions are continued.

(2) *The composition, method of appointment, terms of office, compensation, reimbursement, and qualifications of commission members remain as prescribed by law.*"

Section 10. Section 82-3603, R.C.M. 1947, is amended to read as follows:

**"82-3603. Terms of council members — chairman and vice-chairman — vacancies — expenses of members.** The term of office of each member shall be five (5) years; provided, however, that of the members first appointed, five (5) shall be appointed for terms of one (1) year, five (5) for terms of three (3) years, and five (5) for terms of five (5) years. The governor shall designate a chairman and a vice-chairman from the members of the council to serve as such at the pleasure of the governor. The chairman shall be the chief executive officer of the council. Each vacancy shall be filled for the balance of the unexpired term in the same manner as the original appointment. The members of the council shall not receive any compensation for their services, but shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties as members of the council."

Section 11. Section 82-3605, R.C.M. 1947, is amended to read as follows:



"82-3605. **Employment of officers and employees — compensation.** The *council* may employ, and at pleasure remove, administrative officers and other employees as may be needed and fix their compensation within the amounts made available for such purposes."

Section 12. Sections 82A-503, 82A-504, 82A-505, 82A-506 and 82A-510, R.C.M. 1947, are repealed.

Section 13. This act shall be effective on its passage and approval.

Approved February 27, 1974

## CHAPTER NO. 52

AN ACT TO AMEND SECTIONS 69-3504 AND 69-3504.1, R.C.M. 1947, TO CHANGE THE ADMINISTERING AGENCY FOR THE REGISTRATION AND LICENSING OF MOTORBOATS AND VESSELS FROM THE DEPARTMENT OF REVENUE TO THE REGISTRAR OF MOTOR VEHICLES AND TO PROVIDE THAT MOTORBOATS AND VESSELS MAY BE REGISTERED AT THE COUNTY TREASURER'S OFFICE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 69-3504, R.C.M. 1947, is amended to read as follows:

"69-3504. **Identification number.** (a) The owner of each motorboat requiring numbering by this state shall file an application for number *in the office of the county treasurer wherein the motorboat or vessel is owned or taxable*, on forms *prepared and furnished by the registrar of motor vehicles*. The application shall be signed by the owner of the motorboat and shall be accompanied by a fee of one (\$1) dollar. Any alteration, change or false statement contained in the application for certificate of registration will render the certificate of number null and void. Upon receipt of the application in approved form *the county treasurer shall* issue to the applicant a certificate of number *prepared and furnished by the registrar of motor vehicles*, stating the number awarded to the motorboat and the name and address of the owner. The number awarded must be painted on or attached to each outboard side of the forward half of the motorboat, or if there are no such sides, at a corresponding location on both outboard sides of the foredeck of the motorboat for which it is issued. The number awarded shall read from left to right, in Arabic numerals, in block characters of good proportion, a minimum of three (3) inches in height, excluding border or trim, and of a color which shall contrast with the color of the background, and so maintained as to be clearly visible and legible. The number shall not be placed on the obscured underside of the flared bow where the angle is such that the numbers cannot be easily seen from another vessel or ashore. No numerals, letters or devices other than those used in connection with the identifying number issued

shall be placed in the proximity of the identifying number, and no numerals, letters or devices which might interfere with the ready identification of the motorboat by its identifying number shall be carried as to interfere with the motorboat's identification. The certificate of number shall be pocket size and shall be available to federal, state or local law enforcement officers at all reasonable times for inspection on the motorboat for which issued, whenever the motorboat is on waters of this state, except boat liveries are not required to have the certificate of number on board each motorboat, except that a rental agreement must be carried on board livery motorboats in place of the certificate of number.

*(b) Before filing such application with the county treasurer, the applicant shall submit the same to the county assessor of said county and said county assessor shall enter on said application in a space to be provided for that purpose, the full and true and assessed valuation of said vehicle for the year for which said application for registration is made.*

*(c) The applicant shall, upon the filing of the application, pay to the county treasurer, the registration fee and shall also pay the personal property taxes assessed against the motorboat or vessel for the current year of registration before the application for registration or reregistration may be accepted by the county treasurer.*

*(d) The numbering requirements of this act shall apply to motorboats operated by dealers, manufacturers or their employees as follows:*

*(1) A dealer or manufacturer may apply directly to the registrar of motor vehicles for one (1) identifying number and one (1) or more certificates of number. A dealer's or manufacturer's identifying number shall be displayed on a dealer's or manufacturer's boat while the boat is operating for a purpose related to the buying, selling, or exchanging of the boat by the dealer.*

*(2) The application for a dealer's or manufacturer's identifying number shall include the name of the dealer or manufacturer and the business address of the dealer or manufacturer. Each dealer or manufacturer shall have one (1) identifying number assigned to his business.*

*(3) An application for dealer's or manufacturer's identifying number and certificate of number shall be accompanied by the following fees:*

*(A) for the identifying number, first certificate of number, and set of license decals, five dollars (\$5);*

*(B) for each additional certificate of number and set of license decals applied for in any application, two dollars (\$2).*

*(4) The registrar of motor vehicles shall issue certificates of number for identifying number awarded to a dealer or manufacturer in the same manner as provided in section 69-3504 (a), except that no boat shall be described in the certificate and each certificate shall state that the identifying number has been awarded to a dealer or manufacturer. A dealer's or manufacturer's certificate of number expires on April 30 of the year for which it is issued.*

*(5) A dealer's or manufacturer's identifying number shall be displayed*

in the same manner as provided in section 69-3504 (a) of this act, except that the number may be temporarily attached, and that the last three (3) letters shall be "DLR" for dealer and "MFR" for manufacturer; these letters shall be included, respectively, in dealer or manufacturer identification numbers only.

(6) No person other than a dealer or manufacturer or an employee of a dealer or manufacturer shall display or use a dealer's or manufacturer's identifying number. A dealer's or manufacturer's identifying number may be displayed only on motorboats owned by the dealer or manufacturer.

(7) No dealer or manufacturer or employee of a dealer or manufacturer shall use a dealer's or manufacturer's identifying number for any purpose other than the purpose described in subsection (1) of this section.

(e) The owner of any motorboat already covered by a number in full force and effect, which has been awarded to it pursuant to then operative federal law or a federally approved numbering system of another state, shall record the number prior to operating the motorboat on the waters of this state in excess of the sixty (60) day reciprocity period provided for in section 69-3506 (1) of this act. Such recordation shall be in the manner and pursuant to the procedure required for the award of number under subsection (a) of this section.

(f) Should the ownership of a motorboat change, within a reasonable time a new application form with fee shall be filed with the *county treasurer* and a new certificate of number shall be awarded in the same manner as provided for in an original award of number.

(g) If an agency of the United States government has in force an overall system of identification numbering for motorboats in the United States, the numbering system employed pursuant to this act by the *registrar of motor vehicles* shall be in conformity therewith.

(h) Every certificate of number and the license decals awarded under this act shall continue in effect for a period not to exceed one (1) year, unless sooner terminated or discontinued in accordance with the provisions of this act. Certificates of number and license decals shall show the date of expiration thereon and may be renewed by the owner in the same manner provided for in the initial securing of the certificate.

(i) Certificates of number due shall expire on April 30 of each calendar year and shall no longer be of any effect unless renewed under this act.

(j) In event of transfer of ownership, the purchaser shall furnish the *county treasurer* notice of the acquisition of all or any part of his interest other than the creation of a security interest in a motorboat numbered in this state under this section, or of the loss, theft, destruction or abandonment of the motorboat, within reasonable time thereof. Such transfer, loss, theft, destruction or abandonment shall terminate the certificate of number for the motorboat except that in the case of a recovery from theft, or transfer of a part interest which does not affect the owner's right to operate the motorboat, the recovery or transfer does not terminate the certificate of number.

(k) A holder of a certificate of number shall notify the *county treasurer*

within reasonable time if his address no longer conforms to the address appearing on the certificate and shall, as a part of the notification, furnish the *county treasurer* with his new address. The *registrar of motor vehicles* may provide in its rules for the surrender of the certificate bearing the former address and its replacement with a certificate bearing the new address or the alteration of an outstanding certificate to show the new address of the holder.

(l) No number other than the number and license decal awarded to a motorboat or granted reciprocity under this act, shall be painted, attached or otherwise displayed on either side of the forward half of the motorboat.

(m) Fees collected under this section shall be transmitted to the state treasurer who shall deposit the fees in the motorboat certificate identification account of an earmarked revenue fund. These fees shall be used only for the administration and enforcement of sections 69-3501 through 69-3518.

(n) An owner of a motorboat must notify the *registrar of motor vehicles*, giving the motorboat's identifying number and the owner's name, within reasonable time, when that motorboat becomes documented as a vessel of the United States, is transferred, lost, destroyed, abandoned, frauded, or within sixty (60) days after change of state of principal use."

Section 2. Section 69-3504.1, R.C.M. 1947, is amended to read as follows:

"69-3504.1. **License decals to be displayed.** (1) Every Montana boat numbered in accordance with the provisions of section 69-3504 shall be required to display license decals. for this purpose the *county treasurer*, upon receipt of a certificate of tax of personal property showing payment of tax on the motorboat for the current year, shall issue a pair of decals *prepared and furnished by the registrar of motor vehicles* with all new certificates of number and renewals thereof.

(2) The decals shall be of a style and design prescribed by the *registrar of motor vehicles*, and shall be a color differing from the preceding year. The license decal will be serially numbered and have the expiration date of April 30 of the appropriate year printed thereon.

(3) License decals shall be displayed only in the following manner:

One valid license decal on each side of the forward half three (3) inches aft of the identifying numbers."

Approved February 27, 1974

## CHAPTER NO. 53

AN ACT TO AMEND SECTION 53-903, R.C.M. 1947, TO PROVIDE FOR THE DISPOSITION WITHOUT NOTICE OF A MOTOR VEHICLE WHEN THE VALUE OF THE VEHICLE IS ONE HUNDRED DOLLARS (\$100) OR LESS.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 53-903, R.C.M. 1947, is amended to read as follows:

"53-903. **Notice to owner.** (1) Within seventy-two (72) hours after any vehicle is removed and held by or at the direction of the Montana highway patrol or the city police, they shall notify the sheriff of the county in which the vehicle was located at the time it was taken into custody and the place where the vehicle is being held. In addition the Montana highway patrol or the city police shall furnish the sheriff a complete description of the vehicle to include year, make, model, serial number and license number if available, any costs incurred to that date in the removal, preservation and custody of the vehicle, and any available information concerning its ownership.

(2) The sheriff shall make reasonable efforts to ascertain the name and address of the owner, lien holder, or person entitled to possession of the vehicle. If such name and address are ascertained, the sheriff shall notify such owner and lien holder or person of the location of the vehicle.

(a) If the vehicle is registered in the office of the registrar of motor vehicles of this state, notice shall be deemed given when a registered or certified letter addressed to the registered owner of the vehicle and lien holder, if any, at the latest address shown by the records in the office of the registrar, return receipt requested and postage prepaid thereon, is mailed at least thirty (30) days before the vehicle is sold as hereinafter provided.

(b) If the identity of the last registered owner cannot be determined; or if the registration contains no address for the owner; or if it is impossible to determine with reasonable certainty the identity and addresses of all lien holders, notice by one (1) publication in one (1) newspaper of general circulation in the county where the motor vehicle was abandoned shall be sufficient to meet all requirements of notice pursuant to this act. Such notice by publication can contain multiple listings of abandoned vehicles. Any such notice shall be within the time requirements prescribed for notice by certified or registered mail and shall have the same contents required for a notice by certified or registered mail.

(3) *A vehicle found by law enforcement officials to be a "junk vehicle" as defined by section 69-6801 and certified as having an appraised value of one hundred dollars (\$100) or less as determined by the county assessor in accordance with the rules and regulations of the department of revenue may be directly submitted for disposal in accordance with the provisions of Chapter 69-68, upon a release given by the sheriff. In the release the sheriff shall include the following information: a description of the vehicle including year, make, model, serial number, and license number if available. A release provided by the sheriff under this section shall be transmitted to the motor vehicle wrecking facility and shall be considered by that facility to meet the requirements for records under section 69-6804. Vehicles described in this section may be submitted without notice and without a required holding period."*

Approved February 27, 1974

**CHAPTER NO. 54**

AN ACT AMENDING SECTION 84-1502, R.C.M. 1947, TO SPECIFICALLY DENY A DEDUCTION FOR INCOME TAXES PAID OTHER STATES AND FOREIGN COUNTRIES BY A CORPORATION DOING BUSINESS IN MONTANA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 84-1502, R.C.M. 1947, is amended to read as follows:

"84-1502. **Deductions allowed in computing income.** In computing the net income the following deductions shall be allowed from the gross income received by such corporation within the year from all sources:

1. All the ordinary and necessary expenses paid or incurred during the taxable year in the maintenance and operation of its business and properties, including reasonable allowance for salaries for personal services actually rendered, subject to the limitation hereinafter contained, rentals or other payments required to be made as a condition to the continued use or possession of property to which the corporation has not taken or is not taking title, or in which it has no equity. No deduction shall be allowed for salaries paid upon which the recipient thereof has not paid Montana state income tax; provided, however, that where domestic corporations are taxed on income derived from without the state, salaries of officers paid in connection with securing such income shall be deductible.

2. (A) All losses actually sustained and charged off within the year and not compensated by insurance or otherwise, including a reasonable allowance for the wear and tear and obsolescence of property used in the trade or business, such allowance to be determined according to the provisions of section 167 of the internal revenue code in effect with respect to the taxable year. All elections for depreciation shall be the same as the elections made for federal income tax purposes. No deduction shall be allowed for any amount paid out for any buildings, permanent improvements or betterments made to increase the value of any property or estate and no deduction shall be made for any amount of expense of restoring property or making good the exhaustion thereof for which an allowance is or has been made.

(B) (a) There shall be allowed as a deduction for the taxable period a net operating loss deduction determined according to the provisions of this subsection. The net operating loss deduction is the aggregate of net operating loss carryovers to such taxable period plus the net operating loss carrybacks to such taxable period. The term "net operating loss" means the excess of the deductions allowed by this section, 84-1502, over the gross income, with the modifications specified in paragraph (b) of this subsection. If for any taxable period beginning after December 31, 1970,

a net operating loss is sustained, such loss shall be a net operating loss carryback to each of the three (3) taxable periods preceding the taxable period of such loss and shall be a net operating loss carryover to each of the five (5) taxable periods following the taxable period of such loss. The portion of such loss which shall be carried to each of the other taxable years shall be the excess, if any, of the amount of such loss over the sum of the net income for each of the prior taxable periods to which such loss was carried. For purposes of the preceding sentence, the net income for such prior taxable period shall be computed with the modifications specified in paragraph (b) (ii) of this subsection and by determining the amount of the net operating loss deduction without regard to the net operating loss for the loss period or any taxable period thereafter, and the net income so computed shall not be considered to be less than zero.

(b) The modifications referred to in paragraph (a) of this subsection shall be as follows:

- (i) No net operating loss deduction shall be allowed.
- (ii) The deduction for depletion shall not exceed the amount which would be allowable if computed under the cost method.
- (c) A net operating loss deduction shall be allowed only with regard to losses attributable to the business carried on within the state of Montana.

(d) In the case of a merger of corporations, the surviving corporation shall not be allowed a net operating loss deduction for net operating losses sustained by the merged corporations prior to the date of merger.

In the case of a consolidation of corporations, the new corporate entity shall not be allowed a deduction for net operating losses sustained by the consolidated corporations prior to the date of consolidation.

(e) Notwithstanding the provisions of section 84-1508.1 (c), R.C.M. 1947, interest shall not be paid with respect to a refund of tax resulting from a net operating loss carryback or carryover.

(f) The net operating loss deduction shall not be allowed with respect to taxable periods which ended on or before December 31, 1970, but shall be allowed only with respect to taxable periods beginning on or after January 1, 1971.

3. In the case of mines, other natural deposits, oil and gas wells, and timber, a reasonable allowance for depletion and for depreciation of improvements, such reasonable allowance to be determined according to the provisions of the internal revenue code in effect for the taxable year. All elections made under the internal revenue code with respect to capitalizing or expensing exploration and development costs and intangible drilling expenses for corporation license tax purposes shall be the same as the elections made for federal income tax purposes.

4. The amount of interest paid within the year on its indebtedness incurred in the operation of the business from which its income is derived; but no interest shall be allowed as a deduction if paid on an indebtedness created for the purchase, maintenance or improvement of property or for

the conduct of business unless the income from such property or business would be taxable under this act.

5. Interest income from obligations of the state of Montana, or any political subdivision or municipality of the state of Montana.

6. Taxes paid within the year except the following:

(a) Taxes imposed by this act.

(b) Taxes assessed against local benefits of a kind tending to increase the value of the property assessed.

(c) Taxes on or according to or measured by net income or profits imposed by authority of the government of the United States.

(d) *Taxes imposed by any other state or country upon or measured by net income or profits.*

Taxes deductible under this act shall be construed to include taxes imposed by any county, school district or municipality of this state."

Section 2. This act is effective on its passage and approval.

Approved February 27, 1974

## CHAPTER NO. 55

AN ACT AMENDING SECTION 75-6917, R.C.M. 1947, TO TRANSFER UNEXPENDED PUBLIC SCHOOL EQUALIZATION MONIES TO THE PERMISSIVE LEVY DEFICIENCY FUND TO REDUCE THE STATEWIDE PERMISSIVE LEVY DEFICIENCY LEVY; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 75-6917, R.C.M. 1947, is amended to read as follows:

"75-6917. **Purpose of state equalization aid and duties of the board of public education for distribution.** *Except as provided in 75-6917.1, the moneys available for state equalization aid shall be distributed and apportioned to provide an annual minimum operating revenue for the elementary and high schools in each county, exclusive of revenues required for debt service and for the payment of any and all costs and expense incurred in connection with any adult education program, recreation program, school food services program, new buildings, new grounds, and transportation.*

The board of public education shall administer and distribute the state equalization aid in the manner and with the powers and duties provided by law. To this end, the board of public education shall:

(1) adopt policies for regulating the distribution of state equalization aid in accordance with the provisions of law;



(2) have the power to require such reports from the county superintendents, budget boards, county treasurers, and trustees as it may deem necessary; and

(3) order the superintendent of public instruction to distribute the state equalization aid on the basis of each district's annual entitlement to such aid as established by the superintendent of public instruction. In ordering the distribution of state equalization aid, the board of public education shall not increase or decrease the state equalization aid distribution to any district on account of any difference which may occur during the school fiscal year between budgeted and actual receipts from any other source of school revenue.

Should a district receive more state equalization aid than it is entitled to, the county treasurer must return the overpayment to the state upon the request of the superintendent of public instruction in the manner prescribed by the municipal division of the department of intergovernmental relations."

Section 2. There is a new section to be numbered 75-6917.1, R.C.M. 1947, which reads as follows:

**75-6917.1. Distribution of excess state equalization monies.** Monies appropriated for foundation program purposes are exempt from the provisions of section 82-109(b), R.C.M. 1947. Monies appropriated for foundation program purposes shall be expended to as great an extent as possible, irrespective of the availability of foundation program revenues from other sources. Any unencumbered funds remaining in the public school equalization earmarked revenue account at the end of the fiscal year shall be transferred to the state permissive school levies earmarked revenue account for the purpose of reducing the statewide levy for public school permissive levy deficiency requirements.

Section 3. This act is effective on its passage and approval.

Approved February 27, 1974

## CHAPTER NO. 56

AN ACT AMENDING SECTIONS 84-401, 84-437.2, 84-437.3, R.C.M. 1947, TO PROVIDE THAT AGRICULTURAL LAND SHALL BE CLASSIFIED, APPRAISED, AND ASSESSED ACCORDING TO ITS VALUE FOR AGRICULTURAL PURPOSES; REPEALING SECTION 84-437.7; PROVIDING AN EFFECTIVE DATE; AND TO PROVIDE A REFUND FOR ALL LATE APPLICATION PENALTIES COLLECTED UNDER SUBSECTION (4)(A) OF SECTION 84-437.2, R.C.M. 1947, AS IT WAS BEFORE THESE AMENDMENTS.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 84-401, R.C.M. 1947, is amended to read as follows:

**"84-401. Property assessed at cash value— exception for agricultural lands.** All taxable property must be assessed at its full cash value except the assessment of agricultural lands shall be based upon the productive capacity of the lands when valued for agricultural purposes. *All lands shall be valued as agricultural lands for tax purposes that meet the qualifications of section 84-437.2, R.C.M. 1947.* Land and the improvements thereon must be separately assessed."

Section 2. Section 84-437.2, R.C.M. 1947, is amended to read as follows:

**"84-437.2. Eligibility of land for valuation as agricultural.** Land which is actively devoted to agricultural use shall be eligible for valuation, assessment and taxation as herein provided each year it meets any of the following qualifications:

(1) It is being actively devoted to agriculture *or it has been historically devoted to agricultural use and it has been valued and assessed as agricultural land for the taxable years 1971, 1972 and 1973 and it continues to be devoted to agricultural use which means;*

(a) *It is used to produce crops including, but not limited to, grains, feed crops, fruits, vegetables; or*

(b) *It is used for grazing; or*

(c) *It is in a crop-land retirement program; or*

(2) The area of such land is not less than five (5) contiguous acres when measured in accordance with the provisions of section 8, [84-437.6], when the gross value of grazing or crops produced *for sale or home consumption* thereon together with any payments received under a crop-land retirement program totals at least one thousand (\$1,000) per year; or

(3) It agriculturally produces *for sale or home consumption* the equivalent of fifteen percent (15%) or more of the owners annual gross income."

Section 3. Section 84-437.3, R.C.M. 1947, is amended to read as follows:

**"84-437.3. Agricultural uses only considered in valuation.** In *valuing* land as agricultural, the department of revenue, shall consider only those indicia of value which such land has for agricultural use."

Section 4. There is a new section to be numbered 84-437.15, R.C.M. 1947, which reads as follows:

**84-437.15. Reclassification by department of revenue.** The department of revenue or its agent may reclassify land as non-agricultural upon giving due notice to the property owner under the provisions of section 84-429.11. Upon notice of a change in classification of land from agricultural to another use, the property owner may petition the department of revenue to reclassify the land as agricultural by completing a form prescribed by the department of revenue and by producing whatever information is necessary to prove that the subject land meets the definition of agricultural land embodied in section 84-437.2, R.C.M. 1947.

Section 5. There is a new section to be numbered 84-437.16, R.C.M. 1947, which reads as follows:

84-437.16. **Reclassification by owner.** Whenever land which is or has been in agricultural use and is or has been valued, assessed and taxed for agricultural use is applied to a use other than agricultural, the owner shall notify the county assessor and the county assessor shall cause the following statement to be recorded by the county recorder: "On the.....day of....., 19.., this land became subject to the roll-back tax imposed by section 84-437.4."

Section 6. Section 84-437.7 is repealed.

Section 7. There is a new section to be numbered 84-437.17, R.C.M. 1947, which reads as follows:

84-437.17. **Refund of late filing fee.** The county commissioners shall refund twenty-five dollars (\$25) to each person who paid a late filing fee under the provisions of section 84-437.2(4)(a), R.C.M. 1947.

Section 8. This act is effective on its passage and approval.

Approved February 28, 1974

## CHAPTER NO. 57

AN ACT TO AMEND SECTION 82A-1602, R.C.M. 1947, TO CHANGE THE NAME OF THE BOARD OF MASSEURS TO THE BOARD OF MASSAGE THERAPISTS.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 82A-1602, R.C.M. 1947, is amended to read as follows:

"82A-1602. **Department—agencies transferred to.** The following agencies are continued, are transferred to the department for administrative purposes only as prescribed in section 82A-108 of this act, and are renamed as indicated:

(1) Abstracters board of examiners, created in Title 66, chapter 21, R. C. M. 1947, renamed the board of abstracters. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the abstracters board of examiners means the board of abstracters.

(2) State board of public accountancy, created in Title 66, chapter 18, R. C. M. 1947, renamed the board of public accountants. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state board of public accountancy means the board of public accountants.

(3) Board of architectural examiners, provided for in Title 66, chapter

1, R. C. M. 1947, renamed the board of architects. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the board of architectural examiners means the board of architects.

(4) State athletic commission, created in Title 82, chapter 3, R. C. M. 1947, renamed the board of athletics. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state athletic commission means the board of athletics.

(5) Board of barber examiners, created in Title 66, chapter 4, R. C. M. 1947, renamed the board of barbers. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the board of barber examiners means the board of barbers.

(6) State board of chiropody medical examiners or the board of chiropodists created in Title 66, chapter 6, R.C.M. 1947, and renamed in section 1, chapter 272, Laws of Montana, 1971, is renamed the state board of podiatry examiners. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state board of chiropody medical examiners or the board of chiropodists means the state board of podiatry examiners.

(7) State board of chiropractic examiners, created in Title 66, chapter 5, R. C. M. 1947, renamed the board of chiropractors. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state board of chiropractic examiners means the board of chiropractors.

(8) Montana state examining board of cosmetology, created in Title 66, chapter 8, R. C. M. 1947, renamed the board of cosmetologists. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana state examining board of cosmetology means the board of cosmetologists.

(9) State board of dental examiners of the state of Montana, created in Title 66, chapter 9, R. C. M. 1947, renamed the board of dentists. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state board of dental examiners of the state of Montana means the board of dentists.

(10) State electrical board, created in Title 66, chapter 28, R. C. M. 1947, renamed the board of electricians. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state electrical board, except the references relating to the functions of making inspections of electrical installations and issuing tags and charging fees therefor or of establishing an electrical code, transferred to the department of justice in chapter 12 of this act, means the board of electricians.

(11) State board of registration for professional engineers and land surveyors, created in Title 66, chapter 23, R. C. M. 1947, renamed the board of professional engineers and land surveyors. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state board of registration for professional engineers and land surveyors means the board of professional engineers and land surveyors.

(12) Montana board of hearing aid dispensers, created in Title 66,

chapter 30, R. C. M. 1947, renamed the board of hearing aid dispensers. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana board of hearing aid dispensers means the board of hearing aid dispensers.

(13) Montana horse racing commission, created in Title 62, chapter 5, R. C. M. 1947, renamed the board of horse racing. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana horse racing commission means the board of horse racing.

(14) State board of massage examiners, created in Title 66, chapter 29, R. C. M. 1947, and renamed the board of masseurs in section 1, chapter 272, *Laws of Montana, 1971, is renamed the board of massage therapists*. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state board of massage examiners or the board of masseurs means the board of massage therapists.

(15) Montana state board of medical examiners, created in Title 66, chapter 10, R.C.M. 1947, and renamed the board of medical doctors in section 1, chapter 272, *Laws of Montana, 1971, is renamed the Montana state board of medical examiners*. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana state board of medical examiners or the board of medical doctors means the Montana state board of medical examiners.

(16) State board of morticians, created in Title 66, chapter 27, R. C. M. 1947, renamed the board of morticians. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the board of morticians means the board of morticians.

(17) State board of examiners for nursing home administrators, created in Title 66, chapter 31, R. C. M. 1947, renamed the board of nursing home administrators. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state board of examiners for nursing home administrators means the board of nursing home administrators.

(18) Montana state board of nursing, created in Title 66, chapter 12, R. C. M. 1947, renamed the board of nurses. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana state board of nursing means the board of nurses.

(19) Montana state board of examiners in optometry, created in Title 66, chapter 13, R. C. M. 1947, renamed the board of optometrists. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana state board of examiners in optometry means the board of optometrists.

(20) State board of osteopathic examiners, provided for in Title 66, chapter 14, R. C. M. 1947, renamed the board of osteopaths. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state board of osteopathic examiners means the board of osteopaths.

(21) Montana state board of pharmacy, created in Title 66, chapter 15, R. C. M. 1947, renamed the board of pharmacists. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana state board of pharmacy means the board of pharmacists.

(22) Board of plumbing examiners (or the state plumbing board), provided for in Title 66, chapter 24, R. C. M. 1947, renamed the board of plumbers. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the board of plumbing examiners or the state plumbing board means the board of plumbers.

(23) Montana real estate commission, created in Title 66, chapter 19, R. C. M. 1947, renamed the board of real estate. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana real estate commission means the board of real estate.

(24) State board of veterinary medical examiners, created in Title 66, chapter 22, R. C. M. 1947, renamed the board of veterinarians. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state board of veterinary medical examiners means the board of veterinarians.

(25) Board of certification for water and waste water operators, provided for in Title 69, chapter 59, R. C. M. 1947, renamed the board of water and waste water operators. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the board of certification for water and waste water operators means the board of water and waste water operators.

(26) Water well contractors' examining board of the state of Montana, created in Title 66, chapter 26, R. C. M. 1947, renamed the board of water-well contractors. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the water-well contractors' examining board of the state of Montana means the board of water-well contractors."

Approved February 28, 1974

## CHAPTER NO. 58

AN ACT TO AMEND SECTION 82A-1602, R.C.M. 1947, TO CHANGE THE NAME OF THE BOARD OF OSTEOPATHS TO THE BOARD OF OSTEOPATHIC PHYSICIANS.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 82A-1602, R.C.M. 1947, is amended to read as follows:

"82A-1602. **Department — agencies transferred to.** The following agencies are continued, are transferred to the department for administrative purposes only as prescribed in section 82A-108 of this act, and are renamed as indicated:

(1) Abstracters board of examiners, created in Title 66, chapter 21, R.C.M. 1947, renamed the board of abstracters. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the abstracters board of examiners means the board of abstracters.

(2) State board of public accountancy, created in Title 66, chapter 18, R.C.M. 1947, renamed the board of public accountants. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state board of public accountancy means the board of public accountants.

(3) Board of architectural examiners, provided for in Title 66, chapter 1, R.C.M. 1947, renamed the board of architects. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the board of architectural examiners means the board of architects.

(4) State athletic commission, created in Title 82, chapter 3, R.C.M. 1947, renamed the board of athletics. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state athletic commission means the board of athletics.

(5) Board of barber examiners, created in Title 66, chapter 4, R.C.M. 1947, renamed the board of barbers. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the board of barber examiners means the board of barbers.

(6) State board of chiropody medical examiners or the board of chiropodists created in Title 66, chapter 6, R.C.M. 1947, and renamed in section 1, chapter 272, Laws of Montana, 1971, is renamed the state board of podiatry examiners. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state board of chiropody medical examiners or the board of chiropodists means the state board of podiatry examiners.

(7) State board of chiropractic examiners, created in Title 66, chapter 5, R.C.M. 1947, renamed the board of chiropractors. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state board of chiropractic examiners means the board of chiropractors.

(8) Montana state examining board of cosmetology, created in Title 66, chapter 8, R.C.M. 1947, renamed the board of cosmetologists. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana state examining board of cosmetology means the board of cosmetologists.

(9) State board of dental examiners of the state of Montana, created in Title 66, chapter 9, R.C.M. 1947, renamed the board of dentists. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state board of dental examiners of the state of Montana means the board of dentists.

(10) State electrical board, created in Title 66, chapter 28, R.C.M. 1947, renamed the board of electricians. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state electrical board, except the references relating to the functions of making inspections of electrical installations and issuing tags and charging fees therefor or of establishing an electrical code, transferred to the department of justice in chapter 12 of this act, means the board of electricians.

(11) State board of registration for professional engineers and land surveyors, created in Title 66, chapter 23, R.C.M. 1947, renamed the board of professional engineers and land surveyors. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state board of registration for professional engineers and land surveyors means the board of professional engineers and land surveyors.

(12) Montana board of hearing aid dispensers, created in Title 66, chapter 30, R.C.M. 1947, renamed the board of hearing aid dispensers. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana board of hearing aid dispensers means the board of hearing aid dispensers.

(13) Montana horse racing commission, created in Title 62, chapter 5, R.C.M. 1947, renamed the board of horse racing. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana horse racing commission means the board of horse racing.

(14) State board of massage examiners, created in Title 66, chapter 29, R.C.M. 1947, renamed the board of masseurs. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state board of massage examiners means the board of masseurs.

(15) Montana state board of medical examiners, created in Title 66, chapter 10, R.C.M. 1947, and renamed the board of medical doctors in section 1, chapter 272, Laws of Montana, 1971, is renamed the Montana state board of medical examiners. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana state board of medical examiners or the board of medical doctors means the Montana state board of medical examiners.

(16) State board of morticians, created in Title 66, chapter 27, R.C.M. 1947, renamed the board of morticians. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the board of morticians means the board of morticians.

(17) State board of examiners for nursing home administrators, created in Title 66, chapter 31, R.C.M. 1947, renamed the board of nursing home administrators. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state board of examiners for nursing home administrators means the board of nursing home administrators.

(18) Montana state board of nursing, created in Title 66, chapter 12, R.C.M. 1947, renamed the board of nurses. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana state board of nursing means the board of nurses.

(19) Montana state board of examiners in optometry, created in Title 66, chapter 13, R.C.M. 1947, renamed the board of optometrists. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana state board of examiners in optometry means the board of optometrists.

(20) State board of osteopathic examiners, provided for in Title 66, chapter 14, R.C.M. 1947, and renamed the board of osteopaths *in section*



*1, chapter 272, Laws of Montana, 1971, is renamed the board of osteopathic physicians. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state board of osteopathic examiners or the board of osteopaths means the board of osteopathic physicians.*

(21) Montana state board of pharmacy, created in Title 66, chapter 15, R.C.M. 1947, renamed the board of pharmacists. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana state board of pharmacy means the board of pharmacists.

(22) Board of plumbing examiners (or the state plumbing board), provided for in Title 66, chapter 24, R.C.M. 1947, renamed the board of plumbers. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the board of plumbing examiners or the state plumbing board means the board of plumbers.

(23) Montana real estate commission, created in Title 66, chapter 19, R.C.M. 1947, renamed the board of real estate. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana real estate commission means the board of real estate.

(24) State board of veterinary medical examiners, created in Title 66, chapter 22, R.C.M. 1947, renamed the board of veterinarians. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state board of veterinary medical examiners means the board of veterinarians.

(25) Board of certification for water and waste water operators, provided for in Title 69, chapter 59, R.C.M. 1947, renamed the board of water and waste water operators. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the board of certification for water and waste water operators means the board of water and waste water operators.

(26) Water well contractors' examining board of the state of Montana, created in Title 66, chapter 26, R.C.M. 1947, renamed the board of water-well contractors. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the water-well contractors' examining board of the state of Montana means the board of water-well contractors."

Approved February 28, 1974

## CHAPTER NO. 59

AN ACT TO AMEND SECTION 66-3211, R.C.M. 1947, TO PROVIDE THAT THE STATE BOARD OF PSYCHOLOGIST EXAMINERS MAY INCREASE THE APPLICATION FEE; AND TO ALLOW AN EXAMINATION FEE TO BE COMMENSURATE WITH COST.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 66-3211, R.C.M. 1947, is amended to read as follows:

"66-3211. **Fees.** (1) The *department* shall collect the following fees, none of which is refundable:

- (a) Application fee — *twenty-five dollars (\$25) to fifty dollars (\$50)*
- (b) Examination fee — *an amount commensurate with the charge of the professional examination service and administrative costs of the department and as set by the board*
- (c) Certificate fee — *ten dollars (\$10)*
- (d) Renewal fee — *twenty dollars (\$20) to fifty dollars (\$50)*

The board *may set the application fee and the annual renewal fee annually within the above limits.*

- (2) The initial certificate fee shall be prorated as follows:

If the certificate is issued between January 2 and March 31..... *ten dollars (\$10)*

If the certificate is issued between April 1 and June 30..... *seven dollars and fifty cents (\$7.50)*

If the certificate is issued between July 1 and September 30..... *five dollars (\$5)*

If the certificate is issued between October 1 and January 1..... *two dollars and fifty cents (\$2.50)*

- (3) Renewal certificates shall be secured annually and dated January 2.

(4) *Fees received by the department shall be deposited in the earmarked revenue fund for the use of the board, subject to section 82A-1603(6)."*

Approved February 28, 1974

## CHAPTER NO. 60

AN ACT DIRECTING THE ATTORNEY GENERAL TO DECLARE BY ORDER A SPEED LIMIT AS REQUIRED BY FEDERAL LAW ON ALL PUBLIC STREETS AND HIGHWAYS IN THE STATE EXCEPT IN THOSE AREAS WHERE A SPEED LIMIT LOWER THAN THAT REQUIRED BY FEDERAL LAW IS PRESENTLY APPLICABLE; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is a new section to be numbered 32-2144.1, R.C.M. 1947, which reads as follows:

32-2144.1. **Declaration of speed limits — exception to the basic**

**rule.** The attorney general shall declare by proclamation filed with the secretary of state a speed limit for all motor vehicles on all public streets and highways in the state whenever the establishment of such a speed limit by the state is required by federal law as a condition to the state's continuing eligibility to receive funds authorized by the Federal Aid Highway Act of 1973 and all acts amendatory thereto or any other federal statute. Such speed limit may not be less than that required by federal law, and the attorney general shall by further proclamation, change the speed limit adopted pursuant to this act to comply with federal law. Any proclamation issued pursuant to this act becomes effective at midnight of the day upon which it is filed with the secretary of state. A speed limit imposed pursuant to this act is an exception to the basic rule requirements of section 32-2144 and a speed in excess of the speed limit established pursuant to this act is unlawful notwithstanding any provision of that section.

Section 2. There is a new section to be numbered 32-2144.2, R.C.M. 1947, which reads as follows:

32-2144.2. **Not applicable to certain streets and highways.** The provisions of this act shall not apply to those public streets and highways for which a speed limit lower than that required by federal law was applicable on the effective date of this act under any other state, county, municipal or other local law, ordinance, regulation or order.

Section 3. There is a new section to be numbered 32-2144.3, R.C.M. 1947, which reads as follows:

32-2144.3. **Termination of declaration.** The attorney general shall terminate by proclamation any speed limit proclaimed under this act whenever such a speed limit is no longer required by federal law as a condition to the state's continuing eligibility to receive funds authorized by the Federal Aid Highway Act of 1973 and all acts amendatory thereto or from any other federal statute.

Section 4. There is a new section to be numbered 32-2144.4, R.C.M. 1947, which reads as follows:

32-2144.4. **Subject to Administrative Procedure Act.** The establishment of a speed limit pursuant to section 1 of this act shall not be subject to the provisions and requirements of the Montana Administrative Procedure Act, section 82-4201, R.C.M. 1947, et seq.

Section 5. There is a new section to be numbered 32-2144.5, R.C.M. 1947, which reads as follows:

32-2144.5. **Lower speed limits.** Nothing in this act shall prohibit any state, county, municipal or other local official, board, or body which has authority to enact laws relating to motor vehicle speed limits from establishing speed limits lower than that required by federal law on any public streets or highways as permitted by law on the effective date of this act.

Section 6. There is a new section to be numbered 32-2144.6, R.C.M. 1947, which reads as follows:

32-2144.6. **Enforcement.** (1) A person violating the speed limit

imposed pursuant to section 1 of this act is guilty of the offense of unnecessary waste of a resource currently in short supply and upon conviction shall be fined five dollars (\$5) and no jail sentence may be imposed. Bond for this offense shall be five dollars (\$5).

(2) No violation of this act shall be recorded or charged against the driver's record of a person convicted of violating this act and that no insurance company shall hold a violation of this act against the insured and there shall be no increase in premiums due to a violation of this act.

Section 7. There is a new section to be numbered 32-2144.7, R.C.M. 1947, which reads as follows:

32-2144.7. This act in no way affects traffic control statutes and violation of existing statutes shall be prosecuted solely as provided therein.

Section 8. This act is effective upon its passage and approval.

Approved March 2, 1974

## CHAPTER NO. 61

AN ACT AMENDING SECTION 75-7001, R.C.M. 1947, DEFINING AN ELIGIBLE TRANSPORTEE ON A SCHOOL BUS AS AT LEAST FIVE (5) YEARS OF AGE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 75-7001, R.C.M. 1947, is amended to read as follows:

"75-7001. **Definitions.** As used in this Title, unless the context clearly indicates otherwise:

"Transportation" shall mean:

(1) a district's conveyance of a pupil by a school bus between his legal residence and the school designated by the trustees for his attendance; or

(2) "individual transportation" whereby a district is relieved of actually conveying a pupil. Such individual transportation may include paying the parent or guardian for conveying the pupil, reimbursing the parent or guardian for the pupil's board and room, or providing supervised correspondence study or supervised home study.

An "eligible transportee" shall mean a public school pupil who:

(1) is not less than *five (5)* years of age nor has attained his twenty-first (21st) birthday;

(2) is a resident of the state of Montana;

(3) regardless of district and county boundaries, resides at least three

(3) miles, over the shortest practical route, from the nearest operating public elementary school or public high school, whichever the case may be; and

(4) is deemed by law to reside with his parent or guardian who maintains legal residence within the boundaries of the district furnishing the transportation regardless of where the eligible transportee actually lives when attending school."

Approved March 2, 1974

## CHAPTER NO. 62

AN ACT TO AMEND SECTION 75-5931, R.C.M. 1947, TO CHANGE MILEAGE REIMBURSEMENT RATE FOR SCHOOL TRUSTEES TO AND FROM THE TRUSTEES' MEETING PLACE FROM EIGHT CENTS (\$.08) TO THE RATE AS PROVIDED IN SECTION 59-801, R.C.M. 1947 FOR EVERY MILE NECESSARILY TRAVELED; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 75-5931, R.C.M. 1947, is amended to read as follows:

"75-5931. **Travel reimbursement and joint board of trustees secretary compensation.** The members of the trustees of any district shall not receive compensation for their services as trustees, except that the secretary of the trustees of a high school district operating a county high school or the secretary of a joint board of trustees may be compensated for his services as the secretary. The members of the trustees who reside over three (3) miles from the trustees' meeting place shall be reimbursed *at the rate as provided in section 59-801, R.C.M. 1947* for every mile necessarily traveled between their residence and the meeting place, and return in attending the regular and special meetings of the trustees, and all trustees shall be similarly reimbursed for meetings called by the county superintendent. The travel reimbursement may be accumulated during the school fiscal year and paid at the end of the fiscal year, at the discretion of each trustee."

Section 2. This act is effective on its passage and approval.

Approved March 2, 1974

## CHAPTER NO. 63

AN ACT TO AMEND SECTION 82A-2005, R.C.M. 1947, TO CLARIFY INSTRUCTIONS TO THE PUBLISHERS OF THE MONTANA REVISED CODES RELATING TO THE FORMER TRAMWAY SAFETY BOARD.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 82A-2005, R.C.M. 1947, is amended to read as follows:

**"82A-2005. Montana outfitters' council — composition — qualifications — terms — allocation — passenger tramway safety.** (1) There is a Montana outfitters' council.

(2) The council consists of seven (7) members. Each member shall be a licensed outfitter and shall represent one (1) of the seven (7) fish and game administrative districts. A member shall be selected by the licensed outfitters residing in that district by election at an annual meeting of the outfitters to be held in the district headquarters at 1:00 p.m. on the second Friday of March. A majority vote of all the outfitters in attendance at the meeting shall determine the member from the district. At the election an alternate member shall also be elected to serve if the first elected member is unable to act.

(3) The members shall serve staggered three (3) year terms and take office on the day they are elected.

(4) The council is allocated to the department.

(5) The council is not subject to the provisions of section 82A-110.

Section 2. Wherever the words "Montana aerial tramway safety board," "passenger tramway safety board," or "board" appear in sections 69-6601, 69-6605, 69-6606, 69-6607, 69-6608, 69-6609, 69-6610, 69-6611, 69-6612, 69-6613, 69-6614, the word "department" is substituted therefor.

Section 3. The publishers of the revised codes of Montana, 1947, are directed, under the supervision of the supreme court of Montana, to make the substitutions enumerated in Section 2 of this act, when reprinting sections or portions of sections of revised codes in either supplements to or replacement volumes for the revised codes."

Approved March 2, 1974

## CHAPTER NO. 64

AN ACT TO AMEND SECTION 77-909, R.C.M. 1947, TO PERMIT THE BOARD OF REGENTS OF HIGHER EDUCATION TO WAIVE ALL TUITION AND FEES FOR ATTENDANCE AT ANY OF THE PUBLIC UNITS OF HIGHER EDUCATION IN MONTANA BY DEPENDENTS OF THOSE MONTANA RESIDENTS WHO ARE PRISONERS OF WAR OR MISSING IN ACTION AS A RESULT OF THE CONFLICT IN SOUTHEAST ASIA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 77-909, R.C.M. 1947, is amended to read as follows:

**"77-909. War orphans' attendance to be without fees.** There shall be established under this act the authority of the *board of regents of higher education* to waive, the charges for the matriculation, tuition, any and all educational fees, for such children of members of the armed forces of the United States who served on active duty during World War II and/or the Korean or Vietnam conflicts and who, at the time of entry into such service, had legal residence in this state and who were heretofore, or shall hereafter be, either killed in action or shall have died as a result of injury, disease, or other disability incurred while in the service of the armed forces of the United States, as are now attending or may hereafter attend any of the units of the greater university of Montana, provided:

(a) The educational assistance to which an eligible person is entitled to under this act may be afforded him during the period beginning on his eighteenth birthday, or on the successful completion of his secondary schooling, whichever first occurs, and ending on his twenty-third birthday, except that,

(b) If he serves on duty with the armed forces as an eligible person after his eighteenth birthday but before his twenty-third birthday, then such period shall end five (5) years after his first discharge or release from such duty with the armed forces excluding from such five (5) years all periods during which the eligible person served on active duty before August 1, 1963, pursuant to (1) a call or order thereto issued to him as a reserve after July 30, 1961, or (2) an extension of an enlistment, appointment or period of duty with the armed forces pursuant to the laws of the United States of America; however, in no event shall such period be extended beyond his thirty-first birthday by reason of this paragraph.

*The board of regents of higher education shall have the authority to waive the charges for the matriculation, tuition, any and all educational fees for the spouse and children of any person who is a resident of Montana and who, either while serving in the armed forces of the United States, is declared by the secretary of defense of the United States to be a prisoner of war or missing in action in connection with the conflict in Southeast Asia after January 1, 1961, or while serving the United States in a civilian capacity is declared by the secretary of state of the United States to be missing or captured in connection with the conflict in Southeast Asia after the same date.*

*Any person who is eligible for the waiver of tuition and fees, upon being accepted for enrollment in any state-supported institution of higher education or state-supported technical or vocational school, shall continue to be eligible for such waiver until the completion of the bachelor of arts or equivalent degree, or certification of completion, as long as he remains enrolled in good standing at the school or institution. Any eligible person shall not be disqualified by either the return of the prisoner of war or person missing in action, or the reported death of the person."*

Approved March 4, 1974

## CHAPTER NO. 65

AN ACT AUTHORIZING CITIES OR TOWNS TO DESTROY DOCU-

MENTS RELATING TO UTILITY OPERATION THAT ARE NOT  
REQUIRED BY THE PUBLIC SERVICE COMMISSION.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 59-515, R.C.M. 1947, is amended to read as follows:

"59-515. **Destruction of old city or town records.** Any city or town officer may destroy old worthless reports, papers or records in his office that have served their purpose and that are substantiated by permanent records, upon the order of the city or town council or commission and with the approval of the *Department of Intergovernmental Relations*, except that records relating to the operation of any public utility by a city or town may be destroyed without the approval of the *Department of Intergovernmental Relations* after the expiration of the period during which they must be kept by said city or town as specified in the appropriate regulations of the *Public Service Commission of Montana*."

Approved March 4, 1974

## CHAPTER NO. 66

AN ACT AMENDING SECTION 75-7121, R.C.M. 1947, TO PERMIT  
SCHOOL DISTRICTS WITHIN THE SAME COUNTY TO COMBINE  
AND COOPERATE FOR THE PURPOSE OF PREPARING BOND  
ISSUES AND NEGOTIATING THEM FOR SALE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 75-7121, R.C.M. 1947, is amended to read as follows:

"75-7121. **Sale of school district bonds.** (1) The trustees shall meet at the time and place fixed in the notice to consider bids on the bond issue. The bonds shall be sold at not less than par and accrued interest and each bidder shall specify the form of bonds to be issued, whether amortization or serial, and the rate of interest at which he will purchase the bonds. A bid for amortization bonds shall have the preference over a bid for serial bonds, all other things being equal; and in considering bids on these classes of bonds, the trustees shall take into consideration not only the rate of interest demanded on each kind, but also every other known element affecting the total cost of the bonds to the district when paid in full. The trustees shall accept the bid which they shall judge most advantageous to the school district. No attorney fees, brokerage or other fees, or commissions of any kind shall be paid to any person or corporation for assisting in the proceedings or in the preparation of the bonds, or in negotiating the sale. The trustees are authorized to reject any or all bids



and to sell the bonds at private sale if they deem it for the best interests of the school district except that such bonds shall not be sold at less than par and accrued interest.

*(2) The trustees may cooperate and combine with other school districts within the same county for the purpose of preparing and negotiating for sale of bond issues, if in the opinion of the trustees such cooperation or combination will facilitate the sale of school district bonds under more advantageous terms or with lower interest rates. Provided, however, that bond issues prepared or negotiated for sale under this section shall not be combined for any other purpose, but shall be entered separately on the books of the county treasurer and shall be otherwise treated as separate bond issues."*

Approved March 4, 1974

## CHAPTER NO. 67

AN ACT AMENDING SECTION 69-4902, R.C.M. 1947, TO PROVIDE THAT A WATER SUPPLY THAT SERVES TWENTY-FIVE (25) OR MORE PERSONS ON A REGULAR AND CONTINUOUS BASIS IS A PUBLIC WATER SUPPLY.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 69-4902, R.C.M. 1947, is amended to read as follows:

"69-4902. **Definitions.** As used in this chapter, unless the context clearly indicates otherwise:

(1) "Contamination" means impairment of the quality of state waters by sewage or industrial wastes creating a hazard to human health;

(2) "Pollution" means the alteration of any of the properties of state waters which is detrimental to their most beneficial use;

(3) "Drainage" means rainfall, surface, and subsoil water;

(4) "Sewage" means domestic and manufacturing filth and waste;

(5) "State waters" means any body of water, irrigation system, or drainage system either surface or underground;

(6) "Public water supply" means any community well, water hauler for cisterns, water bottling plant, water dispenser, or other water supply that serves ten (10) or more families, or twenty-five (25) or more persons on a regular and continuous basis;

(7) "Person" means any person, firm, corporation, water or ice company, public institution, municipality or other political subdivision of the state."

Approved March 4, 1974

**CHAPTER NO. 68**

AN ACT VALIDATING, RATIFYING, APPROVING AND CONFIRMING BONDS AND OTHER INSTRUMENTS OR OBLIGATIONS, HERETOFORE ISSUED BY PUBLIC BODIES OF THIS STATE, AND ALL PROCEEDINGS HERETOFORE TAKEN BY SUCH PUBLIC BODIES, TO AUTHORIZE AND ISSUE SUCH BONDS, INSTRUMENTS AND OTHER OBLIGATIONS, HOWEVER DESCRIBED, AND PROVIDING THAT THIS ACT MAY BE CITED AS 'THE 1974 BOND VALIDATING ACT'; CONTAINING A REPEALING CLAUSE AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. This act may be cited as "The 1974 Bond Validating Act."

Section 2. The following terms, wherever used or referred to in this act, shall have the following meanings:

(1) The term "public body" shall include a county, city, town, school district, irrigation district, drainage district, special improvement district, or any other political or governmental subdivision of the state of Montana, and shall also include the state board of education, the state board of examiners, the state water conservation board, the state highway commission, or any other governmental agency of this state.

(2) The term "bonds" shall include bonds, notes, warrants, debentures, certificates of indebtedness, temporary bonds, temporary notes, interim receipts, interim certificates and all instruments or obligations evidencing or representing indebtedness, or evidencing or representing the borrowing of money, or evidencing or representing a charge, lien or encumbrance on specific revenues, income or property of a public body, including all instruments or obligations payable from a special fund.

Section 3. All bonds heretofore issued by any public body of this state, and all proceedings heretofore taken for the authorization and issuance of such bonds, for the levy, establishment, pledge and appropriation of taxes, special assessments and other charges and revenues to pay such bonds, and for the sale, exchange, execution and delivery thereof, are hereby validated, ratified, approved and confirmed, notwithstanding any lack of power (other than constitutional) of such public body, or the governing board or commission or officers thereof, to authorize and issue such bonds, or to sell, exchange, execute or deliver the same, and notwithstanding any defects or irregularities (other than constitutional) in such proceedings or in such sale, exchange, execution or delivery, and bonds of such public bodies, whether heretofore issued or hereafter issued under the authority of proceedings heretofore taken, are and shall be binding, legal, valid and enforceable obligations of such political body.

Section 4. This act shall not apply to or affect any action or appeal instituted on or before January 1, 1974, in which the validity of any such proceedings or of any such bonds is at issue.

Section 5. All acts and parts of acts in conflict with this act are repealed.

Section 6. This act is effective on its passage and approval.

Approved March 4, 1974

## CHAPTER NO. 69

AN ACT TO AMEND SECTION 26-504, R.C.M. 1947, TO AUTHORIZE THE USE OF SNARE TRAPS FOR THE PURPOSE OF SNARING ANIMALS OR BIRDS ONLY IN ACCORDANCE WITH FISH AND GAME REGULATIONS AND DELETING REFERENCE TO ANCHORS.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 26-504, R.C.M. 1947, is amended to read as follows:

"26-504. **Use of snare lawful.** It shall be *lawful* to use a snare trap for the purpose of snaring any animal or bird *except as prohibited by commission regulation.*"

Approved March 4, 1974

## CHAPTER NO. 70

AN ACT TO AUTHORIZE THE EXPENDITURE OF FEDERAL AND STATE FUNDS BY RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is a new section to be numbered 16-1185, R.C.M. 1947, which reads as follows:

16-1185. **Power of county to spend federal and state funds.** The board of county commissioners of any county in the state of Montana shall have the power and authority to appropriate monies received from the federal or state government, regardless of the time the monies are received, by formal resolution. The resolution shall state the source of the monies, the expenditure program for the funds, and the effective date of the appropriation. The expenditure of said funds shall be according to federal requirements specified in the federal act, or state requirements specified in the state legislation.

Approved March 4, 1974

**CHAPTER NO. 71**

AN ACT TO AMEND SECTION 66-1506, R.C.M. 1947, TO PROVIDE THAT THE BOARD OF PHARMACISTS SHALL INCREASE THE FEE FOR REGISTRATION BY RECIPROCITY.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 66-1506, R.C.M. 1947, is amended to read as follows:

**"66-1506. Examination of applicants for registration — fees — certificates.** (a) The board shall meet at least once a year to examine applicants for registration as pharmacists and interns and to transact its other business, giving reasonable notice of all examinations by mail, to all known applicants therefor. The secretary shall record the names of all persons examined by the board together with the grounds upon which the right of each to examination was claimed and also the names of all persons registered by examination or otherwise. The fee for any examination shall be twenty-five dollars (\$25) which fee may, in the discretion of the board, be returned to applicants not taking the examination.

(b) Upon again making payment of such fee any applicant who fails may be entitled to take the next succeeding examination free of charge.

(c) Fees for registration by reciprocity shall be *one hundred dollars (\$100)*.

**Qualifications for examination.** To be entitled to examination by the board as a pharmacist, the applicant shall be a citizen of the United States, of good moral character, and shall be a graduate of the school of pharmacy of the state University of Montana or of a college or school of pharmacy recognized and approved by, or a member, of the American association of colleges of pharmacy, but such applicant shall not receive a registered pharmacist's license until he has complied with the internship requirements established by the state board of pharmacy. During this period, provided applicant has passed such examination, he shall be licensed as an intern only.

**Reciprocity.** The board may, in its discretion, grant registration without examination, to any pharmacist licensed by the board of pharmacy or a similar board of another state which accords similar recognition to licensees of this state, provided the requirements for registration in such other state are, in the opinion of the board, equivalent to the requirements herein provided. Every person licensed and registered under this act shall receive from the state board of pharmacy an appropriate certificate attesting the fact as it may be which certificate shall be conspicuously displayed at all times in his place of business. If the holder be entitled to manage or conduct a pharmacy in the state for himself or another, the fact shall be set forth in the certificate.

Pharmacists or interns not required to be examined or to register anew under this act. Persons, who, at the time of the enactment of this law, hold certificates of registration as pharmacists, or interns, granted by the state board of pharmacy of this state, shall not be required to submit to examinations or to register anew under this law, but all such persons shall apply for and secure annual renewals of their present registration as provided in this act, and in all other respects be amenable to and governed by the provisions of this act and the rules and regulations of the board from time to time promulgated under this act."

Approved March 4, 1974

## CHAPTER NO. 72

AN ACT TO AMEND SECTION 66-1505, R.C.M. 1947, TO PROVIDE THAT THE BOARD OF PHARMACISTS SHALL INCREASE THE COMPENSATION OF THE BOARD, AND TO PROVIDE ACTUAL AND NECESSARY EXPENSES AND MILEAGE AS AUTHORIZED BY SECTION 59-801, R.C.M. 1947.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 66-1505, R.C.M. 1947, is amended to read as follows:

"66-1505. **Salaries and expenses of board members.** Each member of the board shall receive *twenty-five dollars (\$25) a day as compensation for the performance of his services as a board member and shall be compensated in addition thereto for his actual and necessary expenses in attending meetings. Mileage expenses of board members will be paid pursuant to section 59-801, R.C.M. 1947.* The secretary shall receive a salary to be fixed by the board, and all expenses necessarily incurred by him in the performance of his duties."

Approved March 4, 1974

## CHAPTER NO. 73

AN ACT TO REENACT FORMER SECTION 16-1031, R.C.M. 1947, WHICH WAS REPEALED BY SECTION 6 OF CHAPTER 136, LAWS OF 1971, TO PROVIDE FOR AN ALTERNATE METHOD TO CREATE GARBAGE AND ASH DISPOSAL DISTRICTS BY COUNTIES WHICH HAD CREATED SUCH DISTRICTS PRIOR TO 1971, AND PROVIDING FOR THE METHOD OF CREATING, OPERATING AND FINANCING SAID DISTRICTS BY A SPECIAL ASSESSMENT NOT TO EXCEED THREE DOLLARS (\$3) PER MONTH ON THE REAL PROPERTY BENEFITED BY SUCH SERVICE WITHIN SUCH DISTRICT.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is a new section to be numbered 16-1031.1, R.C.M. 1947, which reads as follows:

16-1031.1. **Reestablishment of garbage and ash collection districts.** Any county that had created a garbage and ash collection district pursuant to the provisions of Section 16-1031, R.C.M. 1947, prior to the repeal of said section, may continue to operate a garbage and ash collection district pursuant to this act.

Section 2. There is a new section to be numbered 16-1031.2, R.C.M. 1947, which reads as follows:

16-1031.2. **Garbage and ash collection districts — special assessments.** The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law: To create, abolish and change garbage and ash collection districts in thickly settled areas outside of the limits of incorporated cities and towns. Such districts shall be created under rules to be promulgated by said board, which rules shall provide for petition on the part of a majority of taxpayers residing within such areas, for the survey of proposed districts by the county health officer as to boundaries and methods for disposal of garbage and ashes within such districts. When such a district has been created under the authority of this section the county commissioners shall be authorized and empowered to provide for the maintenance and support thereof and for the purchase or leasing of land necessary for such purpose. The county commissioners may provide for the collection and disposal of garbage and ashes for such districts by entering into contracts with individual contractors or firms to perform such services under a system of rates approved by the commissioners. Such rates shall be applied on a fair and equal basis to all persons utilizing such garbage collection service within a district and all rates so established shall be in relation to the amount and matter of collection and disposal service provided to the various types of customers within a district; provided, however, that in no event shall any fee exceed the amount of three dollars (\$3) per month for a family residential unit. The board of county commissioners may collect the funds necessary to operate said district as herein provided by placing a special assessment on the owners of the real property benefited by such service, and shall collect the same with the general taxes, and such special assessment shall be a lien on said property so assessed.

Approved March 4, 1974

## CHAPTER NO. 74

AN ACT TO AMEND SECTION 82-1925, R.C.M. 1947, DEFINING THE WORD "RESIDENT" UNDER THE PUBLIC CONTRACTORS' PREFERENCE LAW; PROVIDING THAT SUPPLIERS WHOSE

OFFERED MATERIALS ARE MANUFACTURED OR PRODUCED IN MONTANA WITH MONTANA LABOR SHALL BE DEEMED TO BE RESIDENTS.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 82-1925, R.C.M. 1947, is amended to read as follows:

"82-1925. **Residence defined — domestic corporations.** For the purpose of this act the word "resident" shall include actual residence of an individual within this state for a period of more than one (1) year immediately prior to bidding; in a partnership enterprise or an association, the majority of all partners or association members shall have been actual residents of the state of Montana for more than one (1) year immediately prior to bidding; domestic corporations organized under the laws of the state of Montana are prima facie eligible to bid as residents but this qualification may be set aside and a successful bid disallowed where it is shown to the satisfaction of the board, commission, officer or individual charged with the responsibility for the execution of such contract that said corporation is a wholly owned subsidiary of a foreign corporation or that said corporation was formed for the purpose of circumventing the provisions of this act relating to residence. Notwithstanding the foregoing, any *bidder on a contract for purchase of products, materials, supplies or equipment, whether an individual, partnership or corporation, foreign or domestic and regardless of ownership thereof, whose offered materials, supplies or equipment are manufactured or produced in this state by industry located in Montana and Montana labor shall be deemed to be a resident for the purpose of this act.*"

Approved March 4, 1974

## CHAPTER NO. 75

AN ACT PERMITTING COUNTIES TO INCREASE EXPENDITURES FOR THE PURPOSE OF MAINTAINING COUNTY PARKS; AMENDING SECTION 62-102, R.C.M. 1947; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 62-102, R.C.M. 1947, is amended to read as follows:

"62-102. **Use of land — limitation of expenditures.** All tracts of land acquired under this act shall be set aside and used exclusively for public camping and recreational purposes, and each park so established shall be given an appropriate name or number. Except as otherwise provided by law, there are no restrictions on expenditures for the purpose of acquiring, *maintaining* and equipping county parks."

Section 2. This act is effective on its passage and approval.

Approved March 4, 1974

## CHAPTER NO. 76

### AN ACT RELATING TO MOTION PICTURE THEATER EMPLOYEES AND OBSCENE MOTION PICTURES.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is a new section to be numbered 94-8-110.3, R.C.M. 1947, which reads as follows:

94-8-110.3. **Certain motion picture theater employers not liable for prosecution.** (1) As used in this section, "employee" means any person regularly employed by the owner or operator of a motion picture theater if he has no financial interest other than salary or wages in the ownership or operation of the motion picture theater, no financial interest in or control over the selection of the motion pictures shown in the theater, and is working within the motion picture theater where he is regularly employed but does not include a manager of the motion picture theater.

(2) No employee is liable to prosecution under sections 94-8-110 and 94-8-110.1, R.C.M. 1947, or under any city or county ordinance for exhibiting or possessing with intent to exhibit any obscene motion picture provided the employee is acting within the scope of his regular employment at a showing open to the public.

Approved March 4, 1974

## CHAPTER NO. 77

### AN ACT EXTENDING THE ANTIDISCRIMINATION STATUTES TO PROHIBIT DISCRIMINATION AGAINST THE PHYSICALLY HANDICAPPED; AMENDING SECTIONS 64-301 AND 64-302, R.C.M. 1947, AND PROVIDING A PENALTY AND A CIVIL REMEDY.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 64-301, R.C.M. 1947, is amended to read as follows:

"64-301. **Freedom from discrimination as civil right — employment — public accommodations.** The right to be free from discrimination because of race, creed, color, sex, *physical handicap*, or national origin is recognized as and declared to be a civil right. This right shall include, but not be limited to:



- (1) The right to obtain and hold employment without discrimination.
- (2) The right to the full enjoyment of any of the accommodation facilities or privileges of any place of public resort, accommodation, assemblage or amusement."

Section 2. Section 64-302, R.C.M. 1947, is amended to read as follows:

"64-302. **Definition of terms.** Terms used in this act shall have the following definitions:

(1) "Every person" shall be construed to include any owner, lessee, proprietor, manager, agent or employee whether one (1) or more natural persons, partnerships, associations, organizations, corporations, co-operatives, legal representatives, trustees, receivers, of this state and its political subdivisions, boards and commissions, engaged in or exercising control over the operation of any place of public resort, accommodation, assemblage or amusement.

(2) "Deny" is hereby defined to include any act which directly or indirectly, or by subterfuge, by a person or his agent or employee, results or is intended or calculated to result in whole or in part in any discrimination, distinction, restriction or unequal treatment or the requiring of any person to pay a larger sum than the uniform rates charged other persons, or the refusing or withholding from any person the admission, patronage, custom, presence, frequenting, dwelling, staying or lodging in any place of public resort, accommodation, assemblage or amusement except for conditions and limitations established by law and applicable alike to all persons, regardless of race, creed, sex, or color.

(3) "Full enjoyment of" shall be construed to include the right to purchase any service, commodity or article of personal property offered or sold on, or by, any establishment to the public, and the admission of any person to accommodations, advantages, facilities or privileges of any place of public resort, accommodation, assemblage or amusement, without acts directly or indirectly causing persons of any particular race, creed, sex, or color, to be treated as not welcome, accepted, desired or solicited.

(4) "National origin" includes "ancestry."

(5) "Any place of public resort, accommodation, assemblage or amusement" is hereby defined to include, but not to be limited to, any public place, licensed or unlicensed, kept for gain, hire or reward, or where charges are made for admission, service, occupancy or use of any property or facilities, whether conducted for the entertainment, housing or lodging of transient guests, or for the benefit, use or accommodation of those seeking health, recreation or rest, or for the sale of goods and merchandise, or for the rendering of personal service, or for public conveyance or transportation on land, water or in the air, including the stations and terminals thereof and the garaging of vehicles, or where food or beverages of any kind are sold for consumption on the premises, or where public amusement, entertainment, sports or recreation of any kind is offered with or without charge, or where medical service or care is made available, or where the public gathers, congregates or assembles for amusement, recreation of public purposes, or public halls, public elevators, and

public washrooms of buildings and structures occupied by two or more tenants, or by the owner and one or more tenants, or any public library or any educational institution wholly or partially supported by public funds, or schools of special instruction, or nursery schools, or day care centers or children's camps; nothing herein contained shall be construed to include, or apply to, any institute, bona fide club, or place of accommodation, which is by its nature distinctly private provided that where public use is permitted that use shall be covered by this section; nor shall anything herein contained apply to any educational facility operated or maintained by a bona fide religious or sectarian institution; and the right of a natural parent in loco parentis to direct the education and upbringing of a child under his control is hereby affirmed.

(6) *"Physical handicap" means any physical disability, infirmity, malformation or disfigurement which is caused by bodily injury, birth defect or illness, including epilepsy, and shall include without limitation any degree of paralysis, amputation, lack of physical coordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog for the blind, wheelchair, or other remedial appliance or device."*

**Section 3. Employment discrimination against handicapped prohibited.** It is unlawful to discriminate in the hiring or employment against a person because of the physical handicap of such person. There is no discrimination where the nature or extent of the handicap reasonably precludes the performance of the particular employment or where the particular employment may subject the handicapped or his fellow employees to physical harm. A person who practices discrimination in violation of this section commits a misdemeanor, and is also liable in a district court action for civil damages and attorney's fees by the person discriminated against. Should the person who allegedly practiced discrimination prevail in the civil action, he shall be entitled to recover reasonable attorney's fees from the person who alleged the discrimination.

Approved March 4, 1974

## CHAPTER NO. 78

AN ACT REVISING THE SANCTIONS FOR OPERATING A SCHOOL BUS IN VIOLATION OF THE TRANSPORTATION LAW OR POLICIES OF THE BOARD OF PUBLIC EDUCATION, AND AMENDING SECTION 75-7006, R.C.M. 1947; AND TO PROVIDE AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 75-7006, R.C.M. 1947, is amended to read as follows:

"75-7006. **Penalty for violating law, board of education policies**

**or superintendent of public instruction rules and regulations.** Every district, its trustees and employees, and every person under a transportation contract with a district shall be subject to the policies prescribed by the board of public education and the rules and regulations prescribed by the superintendent of public instruction. *When a district knowingly violates a transportation law or board of public education transportation policy, such district shall forfeit any reimbursement otherwise payable under sections 75-7022 and 75-7023 for bus miles actually travelled during that fiscal year in violation of such law or policies. The county superintendent shall suspend all such reimbursements payable to the district until the district corrects the violation. When the district corrects the violation, the county superintendent shall resume paying reimbursements to the district, but the amount forfeited may not be paid to the district.*

*When a person operating a bus under contract with a district knowingly fails to comply with the transportation law or the board of public education transportation policies, the district may not pay him for any bus miles travelled during the contract year in violation of such law or policies. Upon discovering such a violation, the trustees of the district shall give written notice to the person that unless the violation is corrected within ten (10) days of the giving of notice, the contract will be cancelled. The trustees of a district shall order the operation of a bus operated under contract suspended when the bus is being operated in violation of transportation law or policies and the trustees find that such violation jeopardizes the safety of pupils."*

Section 2. This act will be effective upon passage and approval.

Approved March 4, 1974

## CHAPTER NO. 79

### AN ACT AMENDING SECTION 69-2701, R.C.M. 1947, TO PROHIBIT THE SALE OR USE OF FIRECRACKERS AND BOTTLE ROCKETS.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 69-2701, R.C.M. 1947, is amended to read as follows:

**"69-2701. Fireworks prohibited and defined for the purposes of this act.** a. It shall be unlawful to sell, transport or use any fireworks within the state of Montana except as hereinafter provided.

b. The term "fireworks" shall mean and include any combustible, or explosive composition, or any substance or combination of substances, or article prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration or detonation, and shall include sky rockets, Roman candles, Daygo bombs, blank cartridges, toy cannons, toy canes, or toy guns in which explosives other than toy paper caps are used, the type of balloons which require fire underneath to propel the same,

firecrackers, torpedoes, sparklers or other fireworks of like construction and any fireworks containing any explosive or flammable compound or any tablets or other device containing any explosive substance. Nothing in this law shall be construed as applying to toy paper caps containing not more than twenty-five hundredths (.25) of a grain of explosive composition per cap, and to the manufacture, storage, sale or use of signals necessary for the safe operation of railroads or other classes of public or private transportation, nor applying to the military or navy forces of the United States or of this state, or to peace officers, nor as prohibiting the sale or use of blank cartridges for ceremonial, or theatrical, or athletic events.

c. It shall be lawful for any individual, firm, partnership, corporation or association to possess for sale within the state, sell or offer for sale, at retail, or use, within the state of Montana, the permissible fireworks herewith enumerated.

Permissible fireworks shall include dangerous articles and, more specifically, shall include and be limited to the following, but specifically excluding sky rockets, Roman candles and Daygo bombs, *firecrackers and bottle rockets*:

(1) Helicopter type spinners, total pyrotechnic composition not to exceed twenty (20) grams each in weight;

(2) Cylindrical fountains, total pyrotechnic composition not to exceed twenty-five (25) grams each in weight. The inside tube diameter shall not exceed three-fourths ( $\frac{3}{4}$ ) inch;

(3) Cone fountains, total pyrotechnic composition not to exceed fifty (50) grams each in weight;

(4) Wheels, total pyrotechnic composition not to exceed sixty (60) grams in weight, for each driver unit, but there may be any number of drivers on any one wheel. The inside bore of driver tubes shall not be over one-half ( $\frac{1}{2}$ ) inch;

(5) Illuminating torches and colored fire in any form, total pyrotechnic composition not to exceed one hundred (100) grams each in weight;

(6) Sparklers and dipped sticks, total pyrotechnic composition not to exceed one hundred (100) grams each in weight. Pyrotechnic composition containing any chlorate shall not exceed five (5) grams;

(7) Whistles without report, total pyrotechnic composition not to exceed forty (40) grams each in weight;

It shall be unlawful for any individual under the age of eighteen (18) to possess for sale, sell or offer for sale, within the state of Montana, permissive fireworks herein enumerated.

It shall be unlawful for any wholesaler to sell or offer for sale, within the state of Montana, fireworks except as herein defined. It shall be lawful for said wholesaler, however, to transport said fireworks within the state of Montana for sale outside of the state of Montana.

d. No person, firm or corporation shall offer fireworks of any kind as

defined herein for sale at retail before the 24th day of June and after the 5th day of July.

e. It shall be unlawful for any individual, firm, partnership or corporation to discharge or cause to be discharged any pyrotechnics of any description whatever within the exterior boundaries of any state forest, or state park, or state recreation area."

Approved March 4, 1974

## CHAPTER NO. 80

AN ACT AMENDING SECTION 84-1855 TO REQUIRE DEALERS SELLING REFUNDABLE GASOLINE TO OBTAIN A LICENSE FROM THE DEPARTMENT OF REVENUE PRIOR TO SELLING GASOLINE ON WHICH A REFUND MAY BE CLAIMED AND TO DELETE THE PRESENT LIMIT ON REFUND APPLICATIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 84-1855, R.C.M. 1947, is amended to read as follows:

"84-1855. **Refund of gasoline license tax — procedure.** (1) Any person who shall purchase and use any gasoline, on which the Montana gasoline license tax has been paid, for operating or propelling stationary gasoline engines, tractors used off the public highways and streets, motorboats, or for cleaning or dyeing, or for any commercial use other than propelling vehicles upon any of the public highways or streets of this state, shall be allowed a refund of the amount of tax paid directly or indirectly on the gasoline so used. Provided, that such refund or drawback should in no instance exceed the tax paid or to be paid, to the state of Montana [, and no refund shall be allowed of that portion of the tax per gallon upon aviation gasoline allocated to the board of aeronautics by section 1-501, R.C.M. 1947].

Any distributor paying the gasoline license tax to this state erroneously shall be allowed a credit or refund of the amount of tax so paid.

(2) The application for refund shall be a signed statement on a form furnished by the department, accompanied by the original invoice or invoices issued to the claimant at the time of purchase and delivery, showing the total amount of gasoline purchased, the total amount of gasoline on which a refund is claimed, and the amount of the tax claimed for refund. Such further information pertaining to such claim shall be furnished as required by the department, provided that gallons of gasoline used off the roadways, where not verifiable by records of actual use, may be estimated by the applicant according to the following schedule:

(a) on the first one thousand (1,000) gallons of gasoline purchased, or any part thereof, forty-five per cent (45%) of gasoline purchased.

(b) on the next one thousand (1,000) gallons of gasoline purchased, or any part thereof, sixty per cent (60%) of gasoline purchased.

(c) on the next one thousand (1,000) gallons of gasoline purchased, or any part thereof, sixty-five per cent (65%) of gasoline purchased.

(d) on any gasoline purchased in excess of three thousand (3,000) gallons, seventy per cent (70%) of gasoline purchased.

If any invoice is either lost or destroyed, the purchaser may support his claim for refund by submitting an affidavit relating the circumstances of such loss or destruction and by producing such other evidence as may be required by the department.

(3) Any applicant who does not elect to estimate the off-highway use of gasoline according to the schedule in subsection (2) shall maintain records as provided for in this subsection.

(a) Highway and off-highway use of gasoline from common storage. Gasoline purchased and delivered into bulk storage for use in motor vehicles on public roads and nonhighway use must be fully accounted for by detail withdrawal records to accurately show the manner in which used. Gasoline on hand, determined by actual measurement, shall be deducted from a claim and shall be reported as an opening inventory on the next claim. Credit for the inventory is allowed on the next claim if filed within fourteen (14) months from the filing date of the claim which established the inventory.

(b) Highway and off-highway use of gasoline from separate storage. If separate storage tanks are maintained for highway use and off-highway use, the bulk purchase invoices shall be so marked by the dealer at the time of delivery. No further record is required, provided that no gasoline is withdrawn from the off-highway tank for licensed vehicles. Withdrawal of gasoline from the off-highway tank for licensed vehicles will invalidate this method of determining refundable gallonage.

(c) Use of gasoline from restricted use storage. Special storage facilities in the woods, or in farm fields, or for other uses for certain periods, must be identified and explained. If such storage is used entirely for off-highway purposes and is not used in licensed vehicles, no records will be required other than purchase invoices showing the delivery into such storage.

(d) Gasoline purchased for other than bulk storage. Fuel purchased in small containers for nonhighway use must be identified on the purchase invoice and no further record is required.

(e) Resellers. Service stations, bulk dealers and marinas must prepare a separate and complete invoice for each withdrawal of gasoline for own use upon which a refund is to be claimed.

(f) Proof of highway use. When no highway use of gasoline is deducted from the claim, the applicant must substantiate purchases of gasoline and miles traveled for licensed motor vehicles upon request of the department.

(g) Any person who operates a licensed motor vehicle on and off the

public roads for commercial purposes may claim refund of the state license tax on the gasoline used to operate the vehicle on roads or property in private ownership, if such person has maintained the following records:

(i) the total number of highway miles operated by each licensed motor vehicle, including private passenger cars;

(ii) total gallons of gasoline used in each vehicle to include both refund and nonrefund use;

(iii) purchase invoices supporting all gasoline handled through bulk storage, as well as all fuels purchased at service stations or received from other sources. Highway use for each vehicle may be determined by actual measurement, or may be computed by dividing the average miles per gallon highway operation consumption rate into the number of highway miles operated.

(4) All applications for refunds shall be filed with the department of revenue within fourteen (14) months after the date on which the gasoline was purchased as shown by invoices or after the date on which the tax was erroneously paid. Provided, however, that a distributor may file a claim for refund of taxes erroneously paid within three (3) years after the date of such erroneous payment. The department shall have one hundred twenty (120) days after receiving the claim to approve or reject it. If approved, the department shall issue a credit in lieu of refund for the amount of the claim, if the claimant is a distributor. For all other persons, a warrant shall be drawn upon the state treasurer for the amount of the claim.

(5) Should the department of revenue find that the statement contains errors which are not fraudulently inserted, it may correct the statement and approve it as corrected, or the department may require the claimant to file an amended statement. If the state department of revenue determines that any claim has been fraudulently presented or is supported by invoice or invoices fraudulently made or altered or that any statement in the claim or affidavit is willfully false and made for the purpose of misleading, the department may reject such claim in full. If a claim is rejected, the department may suspend claimant's right to refund for a period not to exceed one (1) year.

(6) Any person, other than a licensed distributor, shall obtain a license from the state department of revenue prior to selling gasoline on which a refund may be claimed. The application for license shall contain the applicant's name, address, place or places of business in the state of Montana, and other information which may be required by the department. Licenses issued shall bear a license number and the date of issuance. The department shall keep a record of all licenses issued, canceled, or suspended. *A nontransferable license shall be issued for three (3) years upon payment of a fee of three dollars (\$3). Licenses must be renewed and the fee paid every three (3) years from date of issuance.*

Any person failing to comply with this subsection shall be subject to a fine of not less than twenty-five dollars (\$25) or more than two hundred dollars (\$200) or imprisonment in the county jail for a period not less than ten (10) days or more than sixty (60) days, or both fine and imprisonment."

Section 2. This act shall be effective on its passage and approval.

Approved March 4, 1974

## **CHAPTER NO. 81**

AN ACT REPEALING SECTION 4-133, R.C.M. 1947, RELATING TO CLUB LICENSES TO SELL BEER.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 4-133, R.C.M. 1947, is repealed.

Approved March 4, 1974

## **CHAPTER NO. 82**

AN ACT REPEALING SECTION 4-357, R.C.M. 1947, RELATING TO ANNUAL REPORTS AND ACCOUNTINGS UNDER THE MONTANA BEER ACT.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 4-357, R.C.M. 1947, is repealed.

Approved March 4, 1974

## **CHAPTER NO. 83**

AN ACT TO AMEND SECTIONS 40-4002, 40-4002.1, 40-4101, AND 40-4102, R.C.M. 1947, TO PROVIDE THAT IN DISABILITY INSURANCE POLICIES NEWBORN INFANT COVERAGE IS NOT SUBJECT TO WAITING OR ELIMINATION PERIODS; TO PROVIDE THAT DEDUCTIBLES OR REDUCTION OF BENEFITS MUST BE THE SAME AS FOR OTHER PERSONS COVERED BY THE POLICY; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 40-4002, R.C.M. 1947, is amended to read as follows:

"40-4002. **Scope, format of policy.** No policy of disability insurance



shall be delivered or issued for delivery to any person in this state unless it otherwise complies with this code, and complies with the following:

(1) The entire money and other considerations therefor shall be expressed therein;

(2) The time when the insurance takes effect and terminates shall be expressed therein;

(3) It shall purport to insure only one person, except that a policy may insure, originally or by subsequent amendment, upon the application of an adult member of a family, who shall be deemed the policyholder, any two (2) or more eligible members of that family, including husband, wife, dependent children or any children under a specified age which shall not exceed nineteen years and any other person dependent upon the policyholder;

(4) (a) No policy or certificate of insurance, which in addition to covering the insured, also covers members of the insured's family, may be issued or amended in this state if it contains any disclaimer, waiver, or other limitation of coverage relative to the accident and sickness coverage or insurability of newborn infants of an insured from and after the moment of birth;

*(b) The coverage for newborn infants shall be the same as provided by the policy for other covered persons; provided, however, that for newborn infants there shall be no waiting or elimination periods. A deductible or reduction in benefits applicable to the coverage for newborn infants is not permissible unless it conforms and is consistent with the deductible or reduction in benefits applicable to all other covered persons;*

(5) The style, arrangement and over-all appearance of the policy shall give no undue prominence to any portion of the text, and every printed portion of the text of the policy and of any endorsements or attached papers shall be plainly printed in light-faced type of a style in general use, the size of which shall be uniform and not less than ten (10) point with a lower case unspaced alphabet length not less than one hundred and twenty (120) point (the "text" shall include all printed matter except the name and address of the insurer, name or title of the policy, the brief description, if any, and captions and subcaptions);

(6) The exceptions and reductions of indemnity shall be set forth in the policy and, other than those contained in sections 40-4004 to 40-4026, inclusive, of this chapter, shall be printed, at the insurer's option, either included with the benefit provision to which they apply, or under an appropriate caption such as "Exceptions," or "Exceptions and Reductions," except that if an exception or reduction specifically applies only to a particular benefit of the policy, a statement of such exception or reduction shall be included with the benefit provision to which it applies;

(7) Each such form, including riders and endorsements, shall be identified by a form number in the lower left-hand corner of the first page thereof;

(8) The policy shall contain no provision purporting to make any portion of the charter, rules, constitution or bylaws of the insurer a part of

the policy unless such portion is set forth in full in the policy, except in the case of the incorporation of, or reference to, a statement of rates or classification of risks, or short-rate table filed with the commissioner."

Section 2. Section 40-4002.1, R.C.M. 1947, is amended to read as follows:

"40-4002.1. **Coverage of newborn under family policy.** (a) Each policy of disability insurance or certificate issued thereunder, which in addition to covering the insured, also covers members of the insured's family shall contain a provision granting immediate accident and sickness coverage, from and after the moment of birth, to each newborn infant of any insured.

(b) *The coverage for newborn infants shall be the same as provided by the policy for the other covered persons; provided, however, that for newborn infants there shall be no waiting or elimination periods. A deductible or reduction in benefits applicable to the coverage for newborn infants is not permissible unless it conforms and is consistent with the deductible or reduction in benefits applicable to all other covered persons.*"

Section 3. Section 40-4101, R.C.M. 1947, is amended to read as follows:

"40-4101. **"Group disability insurance" defined—eligible groups.** Group disability insurance is hereby declared to be that form of disability insurance covering groups of persons as defined below, with or without one or more members of their families or one or more of their dependents, or covering one or more members of the families or one or more dependents of such groups of persons, and issued upon the following basis:

(1) Under a policy issued to an employer or trustees of a fund established by an employer, who shall be deemed the policyholder, insuring employees of such employer for the benefit of persons other than the employer. The term "employees" as used herein shall be deemed to include the officers, managers, and employees of the employer, the individual proprietor or partner if the employer is an individual proprietor or partnership, the officers, managers, and employees of subsidiary or affiliated corporations, the individual proprietors, partners and employees of individuals and firms, if the business of the employer and such individual or firm is under common control through stock ownership, contract, or otherwise. The term "employees" as used herein may include retired employees. A policy issued to insure employees of a public body may provide that the term "employees" shall include elected or appointed officials. The policy may provide that the term "employees" shall include the trustees or their employees, or both, if their duties are principally connected with such trusteeship.

(2) Under a policy issued to an association, including a labor union, which shall have a constitution and bylaws and which has been organized and is maintained in good faith for purposes other than that of obtaining insurance, insuring members, employees, or employees of members of the association for the benefit of persons other than the association or its officers or trustees. The term "employees" as used herein may include retired employees.

(3) Under a policy issued to the trustees of a fund established by two (2) or more employers in the same or related industry or by one or more labor unions or by one or more employers and one or more labor unions or by an association as defined in subdivision (2) above, which trustees shall be deemed the policyholder, to insure employees of the employers or members of the unions or of such association, or employees of members of such association, for the benefit of persons other than the employers or the unions or such association. The term "employees" as used herein may include the officers, managers and employees of the employer, and the individual proprietor or partners if the employer is an individual proprietor or partnership. The term "employees" as used herein may include retired employees. The policy may provide that the term "employees" shall include the trustees or their employees, or both, if their duties are principally connected with such trusteeship.

(4) Under a policy issued to any person or organization to which a policy of group life insurance may be issued or delivered in this state to insure any class or classes of individuals that could be insured under such group life policy.

(5) Under a policy issued to cover any other substantially similar group which, in the discretion of the commissioner, may be subject to the issuance of a group disability policy or contract.

(6) Any group disability policy which contains provisions for the payment by the insurer of benefits for expenses incurred on account of hospital, nursing, medical, or surgical services for members of the family or dependents of a person in the insured group may provide for the continuation of such benefit provisions, or any part or parts thereof, after the death of the person in the insured group.

(7) (a) No group disability policy or certificate of insurance, which, in addition to covering persons in the insured group, also covers members of such person's family, may be issued or amended in this state if it contains any disclaimer, waiver, or other limitation of coverage relative to the accident and sickness coverage or insurability of newborn infants of persons in the insured group from and after the moment of birth.

(b) *The coverage for newborn infants shall be the same as provided by the policy for other covered persons; provided, however, that for newborn infants there shall be no waiting or elimination periods. A deductible or reduction in benefits applicable to the coverage for newborn infants is not permissible unless it conforms and is consistent with the deductible or reduction in benefits applicable to all other covered persons.*

Section 4. Section 40-4102, R.C.M. 1947, is amended to read as follows:

**"40-4102. Required provisions of group policies.** Each such group disability insurance policy shall contain in substance the following provisions:

(1) A provision that, in the absence of fraud, all statements made by applicants or the policyholder or by an insured person shall be deemed representations and not warranties, and that no statement made for the

purpose of effecting insurance shall avoid such insurance or reduce benefits unless contained in a written instrument signed by the policyholder or the insured person, a copy of which has been furnished to such policyholder or to such person or his beneficiary.

(2) A provision that the insurer will furnish to the policyholder for delivery to each employee or member of the insured group, a statement in summary form of the essential features of the insurance coverage of such employee or member and to whom benefits thereunder are payable. If dependents are included in the coverage, only one certificate need be issued for each family unit.

(3) A provision that to the group originally insured may be added from time to time eligible new employees or members or dependents, as the case may be, in accordance with the terms of the policy.

If the policy or certificate issued thereunder, in addition to covering persons in the insured group, also covers members of such person's family, it shall contain an additional provision granting immediate accident and sickness coverage, from and after the moment of birth, to each newborn infant of any person in the insured group.

*The coverage for newborn infants shall be the same as provided by the policy for other covered persons; provided, however, that for newborn infants there shall be no waiting or elimination periods. A deductible or reduction in benefits applicable to the coverage for newborn infants is not permissible unless it conforms and is consistent with the deductible or reduction in benefits applicable to all other covered persons."*

Section 5. This act is effective on its passage and approval.

Approved March 4, 1974

## CHAPTER NO. 84

AN ACT TO AMEND SECTION 82A-1602, R.C.M. 1947, TO CHANGE THE NAME OF THE BOARD OF ELECTRICIANS TO THE STATE ELECTRICAL BOARD.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 82A-1602, R.C.M. 1947, is amended to read as follows:

"82A-1602. **Department — agencies transferred to.** The following agencies are continued, are transferred to the department for administrative purposes only as prescribed in section 82A-108 of this act, and are renamed as indicated:

(1) Abstracters board of examiners, created in Title 66, chapter 21, R.C.M. 1947, renamed the board of abstracters. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the abstracters board of examiners means the board of abstracters.

(2) State board of public accountancy, created in Title 66, chapter 18, R.C.M. 1947, renamed the board of public accountants. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state board of public accountancy means the board of public accountants.

(3) Board of architectural examiners, provided for in Title 66, chapter 1, R.C.M. 1947, renamed the board of architects. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the board of architectural examiners means the board of architects.

(4) State athletic commission, created in Title 82, chapter 3, R.C.M. 1947, renamed the board of athletics. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state athletic commission means the board of athletics.

(5) Board of barber examiners, created in Title 66, chapter 4, R.C.M. 1947, renamed the board of barbers. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the board of barber examiners means the board of barbers.

(6) State board of chiropody medical examiners or the board of chiropodists created in Title 66, chapter 6, R.C.M. 1947, and renamed in section 1, chapter 272, Laws of Montana, 1971, is renamed the state board of podiatry examiners. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state board of chiropody medical examiners or the board of chiropodists means the state board of podiatry examiners.

(7) State board of chiropractic examiners, created in Title 66, chapter 5, R.C.M. 1947, renamed the board of chiropractors. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state board of chiropractic examiners means the board of chiropractors.

(8) Montana state examining board of cosmetology, created in Title 66, chapter 8, R.C.M. 1947, renamed the board of cosmetologists. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana state examining board of cosmetology means the board of cosmetologists.

(9) State board of dental examiners of the state of Montana, created in Title 66, chapter 9, R.C.M. 1947, renamed the board of dentists. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state board of dental examiners of the state of Montana means the board of dentists.

(10) State electrical board, created in Title 66, chapter 28, R.C.M. 1947, renamed the board of electricians *in section 1, chapter 272, Laws of Montana, 1971, is renamed the state electrical board*. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the board of electricians *means the state electrical board*.

(11) State board of registration for professional engineers and land surveyors, created in Title 66, chapter 23, R.C.M. 1947, renamed the board

of professional engineers and land surveyors. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state board of registration for professional engineers and land surveyors means the board of professional engineers and land surveyors.

(12) Montana board of hearing aid dispensers, created in Title 66, chapter 30, R.C.M. 1947, renamed the board of hearing aid dispensers. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana board of hearing aid dispensers means the board of hearing aid dispensers.

(13) Montana horse racing commission, created in Title 62, chapter 5, R.C.M. 1947, renamed the board of horse racing. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana horse racing commission means the board of horse racing.

(14) State board of massage examiners, created in Title 66, chapter 29, R.C.M. 1947, renamed the board of masseurs. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state board of massage examiners means the board of masseurs.

(15) Montana state board of medical examiners, created in Title 66, chapter 10, R.C.M. 1947, and renamed the board of medical doctors in section 1, chapter 272, Laws of Montana, 1971, is renamed the Montana state board of medical examiners. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana state board of medical examiners or the board of medical doctors means the Montana state board of medical examiners.

(16) State board of morticians, created in Title 66, chapter 27, R.C.M. 1947, renamed the board of morticians. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the board of morticians means the board of morticians.

(17) State board of examiners for nursing home administrators, created in Title 66, chapter 31, R.C.M. 1947, renamed the board of nursing home administrators. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state board of examiners for nursing home administrators means the board of nursing home administrators.

(18) Montana state board of nursing, created in Title 66, chapter 12, R.C.M. 1947, renamed the board of nurses. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana state board of nursing means the board of nurses.

(19) Montana state board of examiners in optometry, created in Title 66, chapter 13, R.C.M. 1947, renamed the board of optometrists. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana state board of examiners in optometry means the board of optometrists.

(20) State board of osteopathic examiners, provided for in Title 66, chapter 14, R.C.M. 1947, renamed the board of osteopaths. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state board of osteopathic examiners means the board of osteopaths.

(21) Montana state board of pharmacy, created in Title 66, chapter 15, R.C.M. 1947, renamed the board of pharmacists. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana state board of pharmacy means the board of pharmacists.

(22) Board of plumbing examiners (or the state plumbing board), provided for in Title 66, chapter 24, R.C.M. 1947, renamed the board of plumbers. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the board of plumbing examiners or the state plumbing board means the board of plumbers.

(23) Montana real estate commission, created in Title 66, chapter 19, R.C.M. 1947, renamed the board of real estate. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana real estate commission means the board of real estate.

(24) State board of veterinary medical examiners, created in Title 66, chapter 22, R.C.M. 1947, renamed the board of veterinarians. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state board of veterinary medical examiners means the board of veterinarians.

(25) Board of certification for water and waste water operators, provided for in Title 69, chapter 59, R.C.M. 1947, renamed the board of water and waste water operators. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the board of certification for water and waste water operators means the board of water and waste water operators.

(26) Water well contractors' examining board of the state of Montana, created in Title 66, chapter 26, R.C.M. 1947, renamed the board of water-well contractors. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the water-well contractors' examining board of the state of Montana means the board of water-well contractors."

Approved March 4, 1974

## CHAPTER NO. 85

AN ACT PROVIDING THAT A FEE SHALL BE REQUIRED FOR INITIAL INSPECTION PRIOR TO LICENSURE OF BEAUTY SALONS AND BEAUTY COLLEGES BY AMENDING SECTION 66-801, R.C.M. 1947.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 66-801, R.C.M. 1947, is amended to read as follows:

**"66-801. License required to practice or teach cosmetology or operate a beauty shop, cosmetological establishment or school, and provisions for registration of schools of cosmetology.** No person shall practice or teach cosmetology without a license and no place shall be used

or maintained for the teaching of cosmetology for compensation, except under a certificate of registration, and no person shall operate, manage or conduct a beauty shop or school and teach the art therein, or practice therein, without a manager-operator license. No manager-operator license shall be issued after December 31, 1961, unless the applicant therefor shall have been actively engaged in or teaching the practice of cosmetology in this state for a period of one (1) year preceding such application in addition to possessing the other requirements provided for a practitioner or teacher of cosmetology. Any person, firm, copartnership or corporation desiring to operate a cosmetological establishment shall make an application to the board for certificate of registration and license. The application shall be accompanied by the annual registration fee. *No license may be issued until the inspection fees required in section 66-813.1 have been paid.*"

Section 2. There is a new section numbered section 66-813.1, R.C.M. 1947, which reads as follows:

66-813.1. **Inspection fees.** Upon application for a license, any cosmetological establishment must pay an initial inspection fee of twenty-five dollars (\$25), plus actual and necessary expenses of the inspector. This inspection is required prior to issuance of a license.

Approved March 4, 1974

## CHAPTER NO. 86

AN ACT PROVIDING AN INJUNCTIVE REMEDY FOR THE  
DEPARTMENT OF AGRICULTURE TO ENJOIN PERSONS MER-  
CHANDISING IN GRAIN WITHOUT A LICENSE OR BOND.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is a new section to be numbered 3-228.8, R.C.M. 1947, which reads as follows:

3-228.8. The merchandising of grain by any person without the license or bond required by this chapter may be enjoined by the district court on petition of the department. If the respondent is found to have engaged in the merchandising of grain without a license or bond, the court shall enjoin him from further merchandising of grain until he has been duly licensed and bonded. However, it shall not be necessary for the department to show that any individual has been injured by the actions complained of in order to issue the injunction. The procedure for injunctive relief under this act shall be the same as any other action for an injunction pursuant to Title 93, chapter 42, R.C.M. 1947. The injunction provided by this section is deemed to be an additional remedy to the criminal prosecution and punishment provided in chapter 2, Title 3, R.C.M. 1947.

Approved March 4, 1974



## CHAPTER NO. 87

AN ACT TO AMEND SECTION 94-5-610, R.C.M. 1947, ALLOWING UNDER AGE EMPLOYEES TO BAG, CARRY OR TRANSPORT BEER FOR CUSTOMERS AT GROCERY STORES.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 94-5-610, R.C.M. 1947, is amended to read as follows:

**"94-5-610. Unlawful possession of intoxicating substance by children.** (1) A person who has not reached the age of majority commits the offense of possession of intoxicating substance if he knowingly has in his possession an intoxicating substance, *except a person who has not reached the age of majority does not commit the offense of possession of an intoxicating substance when in the course of his employment, he bags, carries or transports beer for customers at a grocery store.*

(2) A person convicted of the offense of possessing an intoxicating substance shall be fined not to exceed fifty dollars (\$50) or be imprisoned in the county jail for any term not to exceed ten (10) days, or both."

Approved March 4, 1974

## CHAPTER NO. 88

AN ACT AMENDING SECTION 92-1334, R.C.M. 1947, RELATING TO OCCUPATIONAL DISEASE COMPENSATION INSURANCE PLANS, BY DELETING CERTAIN FILING FEES, AND A SPECIFIC PHYSICIAN'S CERTIFICATE FEE; MAKING CHANGES IN ACCORDANCE WITH THE EXECUTIVE REORGANIZATION ACT; AND MAKING MINOR STYLE CHANGES.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 92-1334, R.C.M. 1947, is amended to read as follows:

**"92-1334. Compensation plans.** Employers shall secure compensation to their employees under one of the following plans:

### COMPENSATION PLAN NUMBER ONE

1. When and how employer may elect to adopt — direct payment to employee. Any employer in the industries, trades, works, occupations, or employments in this act specified as hazardous, by filing his election to become, subject to and be bound by compensation plan No. 1, upon fur-

nishing satisfactory proof to the *division* of his solvency and financial ability to pay the compensation and benefits in this act provided for, and to discharge all liabilities which are reasonably likely to be incurred by him during the fiscal year for which such election is effective, may, by order of the said *division*, make such payments directly to his employees as they may become entitled to receive the same under the terms and conditions of this act.

2. Proof of solvency of employer electing plan No. 1 to be filed. Every such employer engaged in the state of Montana, in the industries, trades, works, occupations, or employments herein mentioned, and who shall have elected to be bound by such compensation plan No. 1, shall file such proof of his solvency within the time and in such form as may be prescribed by the rules or orders of the *division*.

3. Employer permitted to carry on business and settle directly with employee — renewal of application. If such employer, making such election, shall be found by the *division* to have the requisite financial ability to pay the compensation and benefits in this act provided for, then the *division* shall grant to such employer permission to carry on his business for the fiscal year within which such election is made, and such proof filed, or the remaining portion of such fiscal year, and to make such payments directly to his employees as they may become entitled to receive the same. Every employer, so long as he continues in his employment, and so long as he continues to be bound by such compensation plan No. 1, shall, at least thirty (30) days before the expiration of each fiscal year, renew his application to be permitted to continue to make such payments as aforesaid directly to his employees for the next ensuing fiscal year, and under like circumstances as those mentioned for the granting of such permission upon such first application, the *division* may renew the same from year to year.

4. Additional proof of solvency—revocation of order. The *division* may at any time require from any employer acting under compensation plan No. 1 additional proof of solvency and financial ability to pay the compensation provided by this act, and may at any time, upon notice to such employer of not less than ten (10) or more than twenty (20) days, after and upon a full hearing, revoke any order or approval theretofore made.

5. Requiring security of employer. If the *division* shall find that such employer has no financial responsibility for the payment of the compensation herein provided to be paid, which might reasonably be expected to be chargeable to such employer during the fiscal year to be covered by such permission, the *division* must so find, and must require such employer, before granting to him such permission, or before continuing or engaging in such employment, subject to the provisions of compensation plan No. 1, to give security for such payment, which security must be in such an amount as the *division* finds reasonable and necessary to meet all liabilities of such employer, which may reasonably and ordinarily be expected to accrue during such fiscal year. The security must be deposited with the *division*, may be a certain estimated percent of the employer's last preceding annual payroll, or a certain percent of the established amount of his annual payroll for the fiscal year or the security may be in the form of a bond or undertaking executed to the *division* in the

amount to be fixed by it with two or more sufficient sureties, which undertaking must be conditioned that such employer will well and truly pay, or cause to be paid, all such sums and amounts for which the employer shall become liable under the terms of this act to his employees during said fiscal year; or such security may consist of any state, county, municipal, or school district bonds, or the bonds or evidence of indebtedness of any individuals or corporations which the *division* may deem solvent; and every such deposit and the character and amount of such securities shall at all times be subject to approval, revision, or change by the *division* as in its judgment may be required, and upon proof of the final payment of the liability for which such securities are given, such securities, or any remaining part thereof, shall be returned to the depositor. The *division* is liable for the value and safekeeping of all such deposits or securities.

6. Failure of employer to pay compensation — duty of *division*. Upon failure of *the* employer to pay any compensation provided for in this act, upon the terms and in the amounts and at the times when the same shall become due and payable, it shall be the duty of *the division*, upon demand of the person to whom compensation is due, to apply any deposits made with the *division* to the payment of the same, and it shall be its duty to take the proper steps to convert any securities on deposit with *the division*, or sufficient thereof, into cash and to pay the same upon the liabilities of *the* employer, accruing under the terms of this act, and it shall be its duty, in so far as the same shall be necessary, to collect and enforce the collection of the liability of all sureties upon any bonds which may be given by the said employer to insure the payment of his said liability. And to these ends, and for these purposes, the *division* shall be deemed to be the owner of *the* deposit and security and the obligee in *the* bond in trust for the said purposes, and may proceed in its own name to recover upon such bonds, or foreclose and liquidate *the* securities.

7. When employer to make deposit or security to guarantee payment of compensation. Within thirty (30) days after the happening of an accident where death or the nature of the disability renders the amount of future payments certain, or reasonably certain, the employer shall make a deposit or give security as herein defined with the *division* for the protection and guaranty of the payment of such liability, in such sum as the *division* may direct. *However*, if sufficient securities are already on deposit with *the division*, or if the *division* has determined that the employer has sufficient financial responsibility to meet *the* liability of *the* employer, together with other liabilities already accrued, no such additional deposit or security shall be demanded.

8. When employer may be relieved from liability. Any employer against whom liability may exist for compensation under this act, may, with the approval of the *division*, be relieved therefrom by:

(1) Depositing the present value or the estimated present value of the total unpaid compensation for which such liability exists, assuming interest at five *percent* (5%) per annum, with the *division*; or

(2) Purchasing an annuity within the limitations provided by law, in any insurance company granting annuities, and authorized to transact business in this state, subject to the approval of the *division*.

## COMPENSATION PLAN NUMBER TWO

1. Employer electing plan No. 2 to insure his liability. Any employer in the industries, trades, works, occupations, or employments in this act specified as hazardous, by filing his election to become subject to and bound by compensation plan No. 2, may insure his liability to pay the compensation and benefits herein provided for, in any insurance company authorized to transact such business in this state.

2. Duty of employer electing plan No. 2 — amount of insurance necessary. Any employer electing to become subject to and bound by compensation plan No. 2 shall file with the *division* written acceptance of the provisions of compensation plan No. 2, together with a statement upon forms provided by the *division* of the nature of his employment, the character and location of his works, the number of men employed during the preceding year, or any part of the preceding year, and the probable number of men to be employed during the first fiscal year to be covered by such election, and the *division* shall thereupon determine the amount of insurance which will be reasonably necessary to secure the compensation with which the said employer may reasonably be expected to become chargeable during such fiscal year. And thereupon the employer shall file the policy or policies of insurance herein provided for with the *division*, which policy or policies shall insure in the amount so fixed by the *division* against any and all liability of the employer to pay the compensation and benefits provided for in this act. The amount of such insurance shall be fixed by the *division* for each ensuing fiscal year during which the employer shall engage in his employment, and shall remain subject to the provisions of compensation plan No. 2, and for the purpose of fixing such amount of said insurance, the *division* may make all reasonable and necessary investigation, and the employer shall furnish to the *division* all information which it may require.

3. Policies to contain what. All policies insuring the payment of compensation under this act, must contain a clause to the effect that as between the employee and the insurer the notice to, or knowledge of the occurrence of the injury on the part of the insured, shall be deemed notice or knowledge, as the case may be, on the part of the insurer; that jurisdiction of the insured for the purpose of this act shall be jurisdiction of the insurer; and that the insurer shall, in all things, be bound by and subject to the awards, order, judgments, or decrees rendered against such insured.

4. Agreement to be contained in policies of insurance — deposit of bonds. No such policy shall be issued unless it contains the agreement of the insurer that it will promptly pay to the person entitled to compensation all the installments of compensation or other payments in this act provided for, and that the obligation shall not be affected by any default of the insured after the disablement or by any default in the giving of any notice required by such policy or by this act or otherwise. Such agreement shall be construed to be a direct promise by the insured to the person entitled to compensation. Before issuance of any policy by an insurer as herein authorized, such insurer must deposit with the *division*, bonds of the United States or the state of Montana, or of any school district, county, city or town in the state of Montana, in an amount not less than twenty

thousand dollars (\$20,000.00) or more than one hundred thousand dollars (\$100,000.00) as the *division* may determine. If any insurer shall fail to discharge any liability after the amount thereof shall be determined by the *division*, and within the time limited by the *division*, it shall be the duty of the *division* to convert the bonds, or such part thereof as is necessary, into cash, and from the proceeds liquidate such liability in the manner hereinafter provided; and thereafter the insurer must make an additional deposit to meet any deficiency caused thereby. It is intended hereby to give the *division* the discretion in the matter of whether an insurer has failed to discharge any liability.

5. Policies made subject to this act — form of insurance. Every policy for the insurance of the compensation herein provided for, or against liability therefor, shall be deemed to be made subject to the provisions of this act. No insurer shall enter into any such policy of insurance unless its form shall have been approved by the *division*, as otherwise provided by law.

6. Renewals. Every renewal of such policy shall be made and delivered to the *division* at least thirty (30) days prior to the expiration of the expiring policy.

7. Deposits by insurer with *division*. Within thirty (30) days of the happening of an accident where death or the nature of the disablement renders the amount of future payments certain or reasonably certain, the insurer shall make a deposit, as herein defined, with the *division* for the protection and guarantee of the payment of such liability in such sum as the *division* may direct. However, if the *division* deems the amount on deposit by the insurer under the provisions of paragraph 4 of plan two (2), in this section, sufficient to cover all liabilities of the insurer, then no further deposit shall be required.

8. How insurer relieved from liability. Any insurer against whom liability may exist for compensation under this act, may, with the approval of the *division*, be relieved therefrom by:

1. Depositing the present value or the estimated present value of the total unpaid compensation for which such liability exists, assuming interest at five per centum (5%) per annum, with the *division*; or

2. By purchasing an annuity within the limitations provided by law in any insurance company granting annuities, and authorized to transact business in this state, subject to the approval of the *division*.

9. Cancellation of insurance policy. No policy of insurance issued under the provisions of compensation plan No. 2 shall be canceled within the time limited for its expiration except upon thirty (30) days' notice to the employer in favor of whom such policy is issued, and to the *division* unless such policy sought to be canceled shall have been sooner replaced by other insurance.

10. Report of insurance companies to *division*. Every insurance company transacting business under this act shall, at the time and in the manner prescribed by the *division*, make and file with the *division* such reports of accidents as the *division* may require.

11. Policies to contain clause agreeing to do what — approval or change. Every policy or contract insuring against liability for compensation under compensation plan No. 2 must contain a clause to the effect that the insurer shall be directly and primarily liable to and will pay directly to the employee, or in case of death, to his beneficiaries, or major or minor dependents, the compensation, if any, for which the employer is liable. Every such policy shall at all times be subject to the approval, change, or revision by the *division*, and shall contain the clauses, agreements, and promises required by this act.

12. Deposits under plan No. 2 as security. Any deposit made under the provisions of compensation plan No. 2 shall be held in trust by the *division* as security for the payment of the liability for which the deposit was made. Such deposit may be reduced from time to time with the permission of the *division*, as the payment of the liability of the insurer may reduce the amount required to be on deposit. Such deposit may be changed or renewed when desired by the depositor, by withdrawing the same, or any part thereof, and substituting other deposits therefor; upon proof of the final payment of the liability for which such deposit was made, any deposit remaining shall be returned to the depositor. All earnings made by such deposit shall be first applied upon any liability of the depositors, and if no such liability exists, then such earnings shall upon demand be delivered to such depositor. The *division* shall be liable for the value and safekeeping of such deposit.

### COMPENSATION PLAN NUMBER THREE

1. It is the intent and purpose of compensation plan No. 3 that each employer subject to and bound by this plan shall be liable and pay for all disability to employees due to occupational diseases coming under the provision of this plan, and that all funds collected by assessments as herein provided shall be paid into one common account to be known as the occupational disease compensation account in the agency fund, which account shall be devoted exclusively to the payment of all valid claims for disability from occupational diseases arising out of or in the course of employment coming under the provisions of compensation plan No. 3. Such account shall consist of all assessments and penalties received and paid into the account, or property and securities acquired by and through the use of money belonging to the account, and interest earned upon money belonging to the account, together with any money appropriated by the legislature for the purpose of this act. The accounts of employers insured in such account shall be kept in such a manner as the *division* may prescribe for the purpose of providing information and statistics necessary for determining any changes in rates of classification of employment. The occupational disease compensation account shall be neither more nor less than self-supporting.

2. Any employer, whether subject to and bound by this act or not, may elect to comply with the provisions of compensation plan No. 3 and pay into the occupational disease compensation account the premiums provided in this act, in which event such employer shall not be liable to respond in damages at common law or by statute for disability or death of an employee due to an occupational disease during the period covered by such premiums and shall enjoy the benefits and privileges of this act.

The employee of such an employer shall be deemed to have elected to come under the provisions of this act unless such employee shall execute and file with the *division* on proper form to be furnished for that purpose, a specific election not to be so bound, in which event he shall not enjoy the benefits or privileges of this act until such election is withdrawn.

3. All employments, occupations, or industries affected by the provisions of compensation plan No. 3 shall be divided by the *division* for the purpose of the occupational disease compensation account into classes whose rates may be set and readjusted at such times as the *division* may determine. The *division* may rearrange the classes by withdrawing any employment embraced in one class and transferring it wholly or in part to another class. Separate counts shall be kept of the amounts collected and expended in each class for determining rates, but for paying compensation and dividends the account in the agency fund shall be one and indivisible. The *division* shall determine the hazard of the different classes of occupations or industries, and fix the rates of assessment therefor at a percentage of the annual total payroll of such employer at the lowest rate consistent with the maintenance of a solvent occupational disease compensation account, and the creation of necessary surpluses and reserves, and for such purpose may adopt a system of schedule rating in such a manner as to take account of the peculiar hazard of each individual risk. The *division*, in fixing rates, shall provide for the expenses of administering the account, the disbursements on account of occupational disease to employees in each class, reserves adequate to meet anticipated and unexpected losses, reserves adequate to carry the class to maturity, and such other necessary reserves and surpluses as may be determined by the *division*. The *division* is authorized, in its discretion, to apply tentative rates, subject to modification in accordance with the loss experience of such risks.

4. The initial payment of assessments provided for herein by employers, whether presently engaged in a business, occupation or industry, subject to this act, or an employer who enters such business, occupation or industry at some future date, and all subsequent payment of assessments herein provided shall be made at such times and in such amounts as may be ordered and prescribed by the *division*.

5. Any employer who is in default in the observance of any order of the *division* issued pursuant to the provisions of this act, shall, in addition to any other penalty provided by this act, be charged an advance of twenty-five percent (25%) over the established rate, and such advance rate shall continue to be in force until such employer shall have ceased to be in such default.

6. If at the end of any year, it shall be seen that the contribution to the occupational disease compensation account by any class of industry shall be less than the drain upon such account on account of that class, the deficiency shall be made good to the account on the first day of February of the following year by the employers of that class, in proportion to their respective payments for the previous year.

7. The board of *investments* shall invest in bonds of the United States, bonds of the state of Montana, or bonds of any county, city, or school dis-

strict in the state of Montana, or any other security which may be approved by *the board of investments*, and out of the same and its earnings shall be paid such compensation and benefits as the *division* may direct. *However*, when there is sufficient money in the occupational disease compensation account to meet such compensation payments, any surplus or earnings remaining may be invested in the securities specified in this section.

8. If any employer shall default in any payment to the occupational disease account, the sum due may be collected by an action at law in the name of the state and such right of action shall be cumulative. The *division* is hereby authorized, in its discretion, to cancel any employer's right to operate under compensation plan No. 3 for failure to pay the premiums due. *When the division makes an order canceling an employer's right for failure to pay premiums or assessments the division shall make such order at least sixty (60) days before the cancellation becomes effective and send a formal notice to the sheriff or sheriffs of the county or counties wherein the employer is operating, and the said sheriff or sheriffs shall post a notice in at least three (3) conspicuous places where the workmen can readily see the notices to the effect that the division has canceled the right of the employer to operate under the act, and the notice shall give the date of the effectiveness of the order. After the cancellation date the employer shall have the same status as an employer who is not enrolled under the Occupational Disease Act.*

When an employer's right to operate has been canceled by the *division* for failure to pay premiums and when the *division*, in its discretion, finds that the property and assets of the employer are not sufficient to pay premiums, the *division* may compromise the claim for premiums and accept a payment of an amount less than the total amount due.

9. For any disability to any employee resulting from an occupational disease occurring during default in any payment to the occupational disease compensation account, the defaulting employer as to such disability shall be considered as having elected not to come under the provisions of this act, except that he shall be and remain liable to pay to the occupational disease compensation account the amount of such default together with the penalty prescribed in subsection 5 of this section.

10. The person entitled to sue under the provisions of subsection 9 of this section shall have the option of proceeding by suit or taking under this act. If such persons take under this act, the cause of action against the employer shall be assigned to the state for the benefit of the occupational disease compensation account. If such person shall elect to proceed against the defaulting employer, such election shall constitute a waiver of any right to compensation under the provisions of this act.

11. Any cause of action assigned to the state under the provisions of subsection 10 of this section may be prosecuted or compromised by the *division* in its discretion.

12. Where an employee is entitled to compensation under compensation plan No. 3, he shall file with the *division* his application therefor, together with the certificate of the physician attending him, and the physician to lend all necessary assistance in making application for



compensation and such proof of other matters as may be required by the rules of the *division* without charge to the employee. *The* filing of a certificate of the attending physician shall not constitute a sworn claim for compensation.

13. For proper compliance with the provisions of subsection 12 of this section, the physician, after approval by the *division*, shall be paid out of the occupational disease compensation account.

14. Where death results from an occupational disease, the parties entitled to compensation under compensation plan No. 3, or someone in their behalf, shall make application for the same to the *division*. The application must be accompanied with proof of death and proof of relationship, showing the parties entitled to compensation, certificate of the attending physician, if any, and such other proof as may be required by the *division*.

15. In computing the payroll of any employer the entire compensation received by any employee subject to this act shall be included, whether it be in the form of salary, wage, piecework, or otherwise and whether payable in money, board or otherwise.

16. Disbursements out of the occupational disease compensation account in the agency fund shall be made by the *division*. If at any time there shall not be sufficient money in the occupational disease compensation account with which to pay any warrants drawn thereon, the employer, on account of whose workmen the warrant was drawn, shall pay the same, and upon his next contribution to such fund he shall be credited with the amount so paid, with interest thereon at the rate of six percent (6%) per annum from the date of such payment to the date upon which the next assessment becomes payable; and if the amount of the credit exceeds the amount of such assessment, he shall have a warrant upon such account for the excess, and if *the* warrant be not paid for want of funds, it shall be credited to such employer and be applied upon succeeding assessments.

17. All earnings made by the occupational disease compensation account by reason of interest paid for the deposit thereof, or otherwise, shall be credited to and become a part of *the* account, and the making of profit, either directly or indirectly, by any person, out of the use of the occupational disease compensation account shall constitute a felony, and on conviction thereof shall subject the person making such profit to imprisonment in the state penitentiary for a term not exceeding two (2) years, or a fine not exceeding five thousand dollars (\$5,000.00), or both such fine and imprisonment."

Approved March 4, 1974

## CHAPTER NO. 89

AN ACT TO AMEND THE OUTDOOR ADVERTISING ACT BY  
AMENDING SECTION 32-4716, R.C.M. 1947, TO DEFINE COMMER-

CIAL AND INDUSTRIAL ZONES; TO AMEND SECTION 32-4717, R.C.M. 1947, TO DEFINE SINGLE SIGN; AND TO AMEND SECTION 32-4722, R.C.M. 1947, TO PERMIT THE HIGHWAY COMMISSION TO REMOVE UNLAWFUL OUTDOOR ADVERTISING.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 32-4716, R.C.M. 1947, is amended to read as follows:

"32-4716. **Definition of terms.** As used in this act: (a) "Interstate system" means that portion of the national system of interstate and defense highways located within this state, as officially designated, or as may hereafter be so designated by the commission and approved by the secretary pursuant to the provisions of Title 23, United States Code, "Highways."

(b) "Primary system" means that portion of connected main highways, as officially designated or as may hereafter be so designated by the commission and approved by the secretary pursuant to the provisions of Title 23, United States Code, "Highways."

(c) "Outdoor advertising" means any outdoor sign, display, light, device, figure, painting, drawing, message, plaque, poster, billboard, or other structure which is designed, intended or used to advertise or inform and which is visible from any place on the main traveled way of the interstate or primary systems.

(d) "Commission" means the state highway commission of Montana.

(e) "Secretary" means the secretary of the United States department of transportation.

(f) "Safety rest area" means an area or site established and maintained within or adjacent to the right of way by or under public supervision or control, for the convenience of the traveling public.

(g) "Information center" means an area or site established or maintained at safety rest areas for the purpose of informing the public of places of interest within the state and providing such other information as the commission may consider desirable.

(h) "Visible" means capable of being seen, and legible, without visual aid by a person of normal visual acuity.

(i) "Commercial or industrial zone" means an area which is used or reserved for business, commerce, or trade pursuant to comprehensive local zoning ordinances or regulations, or enabling state legislation, or state legislation itself, including highway service areas lawfully zoned as highway service zones where the primary use of the land is used or reserved for commercial and roadside services, other than outdoor advertising, to serve the traveling public. *Areas temporarily zoned as commercial or industrial by an interim regulation or map adopted as an emergency measure pursuant to section 16-4711, R.C.M. 1947, shall not be considered as covered by this definition.*

(j) "Unzoned commercial or industrial area" means an area not zoned by state or local law, regulation or ordinance which is occupied by one or more industrial or commercial activities, other than outdoor advertising, on the lands along the highway for a distance of six hundred (600) feet immediately adjacent to the activities, and those lands directly opposite on the other side of the highway to the extent of the same dimensions; provided, those lands on the opposite side of the highway are not deemed scenic or having aesthetic value as determined by the commission.

(k) "Commercial or industrial activities" means for purposes of subsection (j) those activities generally recognized as commercial or industrial by zoning authorities in this state, except that none of the following activities shall be considered commercial or industrial:

(i) Agricultural, forestry, grazing, farming and related activities including wayside fresh produce stands.

(ii) Transient or temporary activities.

(iii) Activities not visible from the main traveled way.

(iv) Activities conducted in a building principally used as a residence.

(v) Railroad tracks and minor sidings.

(vi) Activities more than six hundred and sixty (660) feet from the nearest edge of the right of way.

(l) "Maintain" means to allow to exist, subject to the provisions of this act.

(m) "Maintenance" means to repair, refurbish, repaint or otherwise keep an existing sign structure in a state suitable for use.

(n) "Interchange" or "intersection" means those areas and their approach where traffic is channeled off or onto an interstate route including the de-acceleration lanes or acceleration lanes from or to another federal, state, county, city, or other route."

Section 2. Section 32-4719, R.C.M. 1947, is amended to read as follows:

"32-4719. **Standards for permitted advertising.** Signs permitted under section 32-4717 shall conform to the following requirements:

(a) Signs shall not be erected or maintained which exceed 1,200 square feet in area including border and trim, but excluding base or apron, supports, and other structural members.

(b) Maximum length—60 feet.

(c) Maximum height—40 feet, as measured from the ground or, if the sign is attached to a structure, as measured from the base of the sign itself.

(d) No more than two facings visible and readable from the same direction on the main traveled way may be erected on any one sign structure. Whenever two facings are so positioned, neither shall exceed 325 square feet.

(e) Double-faced, back-to-back and V-type signs shall be considered as a single sign or structure.

(f) *Where two (2) or more faces, back to back, are supported by separate structures each shall be considered a single sign.*

(g) No two signs shall be spaced less than five hundred (500) feet apart adjacent to an interstate highway, or limited-access primary highway except that signs may be erected closer than five hundred (500) feet if they are separated by buildings or other obstructions in such a manner that only one sign facing located within the above spacing distance is visible from the highway at any one time.

(h) Signs may not be located within five hundred (500) feet of any of the following which are adjacent to the highway; unless such signs are in an incorporated area:

(i) Public parks.

(ii) Public forests.

(iii) Public playgrounds.

(iv) Scenic areas designated as such by the state highway department or other state agency having and exercising such authority.

(v) Cemeteries.

(i) No sign may be located on an interstate highway or freeway within five hundred (500) feet of an interchange, or intersection at grade, or rest area. Said five hundred (500) feet is to be measured along the interstate or freeway from the beginning or ending of the pavement widening at the exit from or entrance to the main traveled way.

(j) Signs may be illuminated, subject to the following restrictions:

(i) Signs which contain, include, or are illuminated by any flashing, intermittent, or moving light or lights are prohibited, except those giving public service information such as time, date, temperature, weather or similar information.

(ii) Signs which are not effectively shielded as to prevent beams or rays of light from being directed at any portion of the traveled ways of the interstate or federal-aid primary highway or which are of such intensity or brilliance as to cause glare or to impair the vision of the driver of any motor vehicle, or which otherwise interfere with any driver's operation of a motor vehicle are prohibited.

(iii) No sign shall be so illuminated that it interferes with the effectiveness of, or obscures an official traffic sign, device, or signal.

(k) The location of sign structures situated on the primary highways between streets, roads or highways entering or intersecting the main traveled way shall conform to the following minimum spacing criteria:

(i) Where the distance between centerlines of intersecting streets or highways is less than one thousand (1,000) feet, a minimum spacing between structures of one hundred fifty (150) feet may be permitted between the intersecting streets or highways.

(ii) Where the distance between centerlines of intersecting streets or highways is one thousand (1,000) feet or more, minimum spacing between sign structures shall be three hundred (300) feet."

Section 3. Section 32-4722, R.C.M. 1947, is amended to read as follows:

**"32-4722. Advertising deemed unlawful — notice to remove — hearing — appeal to district court.** (a) The following outdoor advertising is deemed unlawful:

(i) When erected after the effective date of this act contrary to the provisions of this act; or

(ii) When a permit is not obtained as prescribed in this act; or

(iii) When a permittee fails to comply with a notice of violation as provided in section 32-4721.

(b) The commission shall give notice in writing, either by certified mail or by personal service, to the owner or occupant of the land on which advertising believed to be unlawful is located and the owner of the outdoor advertising structure, if the latter is known, or if unknown, by posting notice in a conspicuous place on said structure, of its intention to remove the advertising deemed unlawful. Within forty-five (45) days after the notice, the owner of the land or of the structure may make written request for a hearing before the commission to show cause why the structure should not be removed. The commission shall keep a full and complete transcript and record of such hearing, make and enter its findings, conclusions and decisions in the matter and mail copies thereof by certified mail to the party or parties requesting the hearing.

The decision of the commission may be appealed to the district court in the county in which the structure is located. The court shall sustain the decision of the commission if it is supported by substantial evidence as shown by the records and exhibits. If there is no appeal from the commission's decision or if the commission's decision is affirmed, the party or parties requesting the appeal shall be liable for all costs incurred by the commission. Appeals shall be taken within thirty (30) days of the commission's decision by filing a notice and sending a copy of the notice to the commission by certified mail.

The commission shall forward its transcripts, records and exhibits to the district court having jurisdiction within thirty (30) days after receiving notice of such appeal. Appellant shall pay all costs of transcript and records.

If a hearing before the commission is not requested, or if there is no appeal taken from the commission's decision at such hearing, or if the commission's decision is affirmed on appeal, the commission shall immediately remove, *or cause to be removed*, the unlawful outdoor advertising. The owner of the structure and the owner or occupant of the land shall be jointly and severally liable for the costs of such removal. *The department may enter upon lands bearing outdoor advertising and make examination of such advertising. The department may, upon final*

*determination by the commission that an item of outdoor advertising is unlawful, enter upon lands bearing such advertising and remove the unlawful advertising. The commission or the department shall incur no liability for such entry or entries except for injuries resulting from negligence, wantonness or malice."*

Approved March 4, 1974

## CHAPTER NO. 90

AN ACT TO AMEND SECTIONS 80-1701, 80-2404, AND 80-2401, R.C.M. 1947, TO PROVIDE FOR AN ALCOHOLISM SERVICES CENTER AT GALEN STATE HOSPITAL RATHER THAN AT WARM SPRINGS; AND TO MAKE THE ADMITTANCE AND DISCHARGE PROCEDURES THE SAME AS FOR ILL PERSONS.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 80-1701, R.C.M. 1947, is amended to read as follows:

**"80-1701. Location and primary function of hospital — secondary function.** (1) The institution located at Galen is the Galen state hospital and, as its primary function, provides:

(a) Treatment of tuberculosis and silicosis (commonly called miner's consumption).

(b) *Detoxification, diagnosis, treatment and referral for those persons who seek relief from the illness of alcoholism.*

(2) If there are space and funds available, the hospital shall also treat the following:

(a) Emphysema, bronchiectasis, carcinoma of the lung and other diseases of the lung pertaining to pulmonary disorders.

(b) Geriatric and senile patients afflicted with pulmonary disorders and patients who are residents of another state institution."

Section 2. Section 80-2404, R.C.M. 1947, is renumbered 80-1705, and is amended to read as follows:

**"80-1705. Alcoholism services center.** (1) There is an alcoholism services center *located* at the *Galen* state hospital. The admittance and discharge procedures for alcoholics are the same as for ill persons.

(2) As used in this section:

(a) "Alcoholism" means a chronic illness or disorder of behavior characterized by repeated drinking of alcoholic beverages to an extent which endangers the drinker's health, interpersonal relations or economic functioning, or to an extent which endangers the public health, welfare or safety.

(b) An "alcoholic" is a person suffering from the illness of alcoholism.

(3) The alcoholism services center shall:

(a) Provide care, *evaluation*, treatment, *referral*, and rehabilitation to persons in Montana who *are referred for the arrestment of* the illness of alcoholism or the complications thereof;

(b) Consult with, inform, guide and co-operate with Montana communities and citizens' committees in establishing local alcoholism treatment, rehabilitation, *referral*, public information, *and educational* services;

(c) Accumulate and disseminate scientific information on alcoholism to all agencies, groups and individuals, public or private, who require or seek such services;

(d) Initiate, encourage and co-ordinate practical research on alcoholism in Montana aimed at improving treatment, rehabilitation, *referral* and prevention techniques or services;

(e) *Initiate and co-ordinate with the schools and institutions of higher learning in Montana courses of study and clinical experience in the evaluation, care, treatment, referral, rehabilitation and after-care of alcoholics for both professional and lay persons requiring such information and experience; and*

(f) Enter into co-operative agreement with other state, *local or federal* agencies to further the work of the center *and community programs."*

Section 3. Section 80-2401, R.C.M. 1947, is amended to read as follows:

"80-2401. **Location and function of hospital — hospital in division of mental hygiene.** The institution located at Warm Springs is the "Warm Springs state hospital." The only function of the state hospital is the care and treatment of mentally ill persons. The Warm Springs state hospital is in the division of mental hygiene of the department of institutions."

Approved March 4, 1974

## CHAPTER NO. 91

AN ACT TO AMEND THE NOISE LIMITATION STANDARDS FOR SNOWMOBILES; AMENDING THE ENFORCEMENT AND PENALTY PROVISIONS OF THE ACT REGULATING SNOWMOBILE NOISE; AND AMENDING SECTIONS 53-1012, 53-1020, 53-1022, AND 53-1023, R.C.M. 1947.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 53-1012, R.C.M. 1947, is amended to read as follows:

"53-1012. **Definition of terms.** As used in this act, the following terms shall have the meanings indicated herein, unless the context otherwise clearly requires that another meaning be intended:

(a) "Person" includes an individual, partnership, association, corporation, and any other body or group of persons, whether incorporated or not, and regardless of the degree of formal organization.

(b) "Snowmobile" includes any self-propelled vehicle designed primarily for travel on snow or ice or natural terrain, which may be steered by wheels, skis, or runners, and which is not otherwise registered or licensed under the laws of the state of Montana.

(c) "Owner" shall include every person as defined herein, other than a lien holder or other person having a security interest only, holding record title to a snowmobile, and entitled to the use or possession thereof.

(d) "Operator" shall include every person who operates or is in actual physical control of the operation of a snowmobile.

(e) "Roadway" shall include only those portions of any highway, road or street improved, designed, or ordinarily used for travel or parking of motor vehicles.

(f) "Commission" means the fish and game commission of the state of Montana.

(g) "*dbA*" means sound pressure level measured on the "A" weight scale in decibels.

(h) "*New snowmobile*" means any snowmobile that has not been previously sold to an "owner" as defined in subsection (c)."

Section 2. Section 53-1020, R.C.M. 1947, is amended to read as follows:

"53-1020. **Other unlawful operation.** No person while operating a snowmobile, shall use the same:

(1) For the purpose of driving; rallying or harassing any of the game animals, game birds, or fur-bearing animals of the state, or any livestock, provided, however, that an owner of livestock is not prohibited from managing or driving his own livestock by the use of snowmobiles and may direct other persons to so manage or drive his livestock; provided further that the department of fish and game, including its duly authorized employees, is not prohibited from managing or driving game animals, game birds or fur-bearing animals by the use of snowmobiles.

(2) To discharge a firearm from or upon a snowmobile.

(3) Regulation of snowmobile noise. (a) Except as provided in this section, every snowmobile shall be equipped at all times with noise-suppression devices, including an exhaust muffler, in good working order and in constant operation. *No snowmobile shall be modified by any person in any manner that shall amplify or otherwise increase total noise emissions to a level greater than that emitted by the snowmobile as originally constructed, regardless of date of manufacture.*



(b) *No new snowmobile manufactured prior to June 30, 1975, except snowmobiles designated for competition purposes only, may be sold or offered for sale unless that machine has been certified by the manufacturer as being able to conform to a sound level limitation of not more than eighty-two (82) dbA measured at fifty (50) feet. Every person who owns or operates a snowmobile manufactured after June 30, 1972, but prior to June 30, 1975, shall maintain his machine in such a manner that it will not exceed a sound level limitation of eighty-two (82) dbA measured at fifty (50) feet.*

(c) *No new snowmobile manufactured after June 30, 1975, but prior to June 30, 1978, except snowmobiles designated for competition purposes only, may be sold or offered for sale unless that machine has been certified by the manufacturer as being able to conform to a sound level limitation of not more than seventy-eight (78) dbA measured at fifty (50) feet. Every person who owns or operates a snowmobile manufactured after June 30, 1975, but prior to June 30, 1978, shall maintain his machine in such a manner that it will not exceed a sound level limitation of seventy-eight (78) dbA measured at fifty (50) feet.*

(d) *No new snowmobile manufactured after June 30, 1978, except snowmobiles designated for competition purposes only, may be sold or offered for sale unless that machine has been certified by the manufacturer as being able to conform to a sound level limitation of not more than seventy-three (73) dbA measured at fifty (50) feet. Every person who owns or operates a snowmobile manufactured after June 30, 1978, shall maintain his machine in such a manner that it will not exceed a sound level limitation of seventy-three (73) dbA measured at fifty (50) feet.*

(e) *The fish and game commission shall have the authority to adopt and revise sound level limitations for all snowmobiles manufactured after June 30, 1978. However, a sound level limitation adopted or revised by the commission shall not be higher than a decibel standard of seventy-three (73) dbA measured at fifty (50) feet. The adoption or revision of any sound level limitation by the commission shall be effective beginning June 30 of the succeeding calendar year and any sound level limitation formally adopted or revised shall remain in effect for a minimum period of two (2) years. Every person who owns or operates a snowmobile manufactured after June 30, 1978, shall maintain his machine in compliance with the sound level limitation which is applicable to new snowmobiles manufactured during the period that a sound level limitation adopted by the commission is in effect.*

(f) *A manufacturer who certifies that a new snowmobile can comply with the noise limitation requirements of this act shall affix a permanent notice of that certification to every snowmobile offered for sale in the state of Montana.*

(g) *In certifying that a new snowmobile can comply with the noise limitation requirements of this act, a manufacturer shall make such a certification based upon measurements made in accordance with SAE recommended practice J192, as amended. The fish and game commission, in enforcing the provisions of this act, shall make measurements of snow-*

*mobile noise in accordance with applicable practices outlined in the "procedure for sound level measurements of snowmobiles" used by the international snowmobile industry association (January, 1969), as amended, or with such other standards for measurement of sound level as the commission may adopt.*

*(h) This section does not apply to organized races or similar competitive events held on*

*(i) private lands, with the permission of the owner, lessee, or custodian of the land, or*

*(ii) public lands, with the consent of the public agency having the authority to grant such consent, provided that total sound produced by such an event shall not exceed fifty (50) dbA at any point fifty (50) feet or more outside the area under the control of the sponsoring entity.*

*(4) Upon a railroad right of way or railroad track, provided, however, it shall not be unlawful for officers or employees of any railroad operating over said tracks to operate snowmobiles thereon."*

Section 3. Section 53-1022, R.C.M. 1947, is amended to read as follows:

**"53-1022. Enforcement.** The following persons may enforce the provisions of this act:

*(1) The enforcement officers employed by the state department of fish and game, with respect to violations relating to wildlife or birds, discharging firearms, or sound level limitations. However, with respect to the sale of any new snowmobile which is subject to the provisions of this act, the attorney general of the state of Montana shall, upon the request of the commission, sue for the recovery of the penalties provided in section 53-1023, and bring an action for a restraining order, or temporary or permanent injunction, against a person who sells or offers to sell a new snowmobile that does not satisfy the sound level limitations imposed by this act.*

*(2) The sheriffs of the respective counties, and the police officers of cities and towns, within their respective jurisdictions, and the state highway patrol, with respect to any violation of this act upon the public streets or highways, or any public right of way."*

Section 4. Section 53-1023, R.C.M. 1947, is amended to read as follows:

**"53-1023. Penalties.** (1) *A person who violates any provision of this act or a rule and regulation adopted pursuant thereto shall pay a civil penalty of not less than fifteen dollars (\$15) nor more than five hundred dollars (\$500) for each separate violation.*

*(2) A person who willfully violates any provision of this act or a rule or regulation adopted pursuant thereto shall pay a civil penalty of not less than fifty dollars (\$50) nor more than one thousand dollars (\$1,000) for each separate violation.*

*(3) A manufacturer who certifies that a new snowmobile can meet the*

*sound level limitations imposed by this act shall be subject to the penalty provisions of subsections (1) and (2) if any machine so certified does not meet the appropriate sound level limitation.*

*(4) For the purposes of this section, every sale of a new snowmobile that does not meet the sound level limitations imposed by this act shall constitute a separate violation."*

Approved March 4, 1974

## CHAPTER NO. 92

AN ACT AMENDING SECTION 79-310, R.C.M. 1947, TO PERMIT THE BOARD OF INVESTMENTS TO INVEST FUNDS IN BUILDING AND LOAN ASSOCIATIONS AND SAVINGS AND LOAN ASSOCIATIONS.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 79-310, R.C.M. 1947, is amended to read as follows:

"79-310. **Permissible investments.** (1) The following securities are permissible investments for all investment funds referred to in 79-309, except as indicated:

(a) any securities authorized to be pledged to secure deposits of public funds under 79-307 of this act;

(b) bonds, notes, debentures, equipment obligations, or any other kind of absolute obligation of any corporation organized and operating in any state of the United States, or in Canada if the obligations purchased are payable in United States dollars; provided that all investments under subsection (b) must be rated by one (1) nationally recognized rating agency among the top third of their quality categories, not applicable to defaulted bonds;

(c) commercial paper of prime quality, as defined by one (1) nationally recognized rating agency, issued by any corporation organized and operating in any state of the United States, provided that:

(i) such securities mature in two hundred seventy (270) days or less; and

(ii) the issuing corporation, or the parent company of a finance subsidiary issuing commercial paper, at the time of the last financial reporting period, had a ratio of current assets to current liabilities, including among current liabilities long-term debt maturing within one (1) year, of at least one and one-half (1 ½) to one (1); and had received net income averaging one million dollars (\$1,000,000) or more annually for the preceding five (5) years; and

(iii) no investment may be made at any time under subsection (c) which would cause the book value of such investments in any investment fund

to exceed ten percent (10%) of the book value of such fund, or would cause the commercial paper of any one corporation to exceed two percent (2%) of the book value of such fund;

(d) bankers' acceptances guaranteed by any bank having its principal office in any state of the United States and having deposits in excess of five hundred million dollars (\$500,000,000);

(e) interest-bearing deposits in banks, *building and loan associations*, and *savings and loan associations* located in the state of Montana, provided, however, that the board of investments shall require pledged securities as specified in section 79-301; interest on said deposits shall not be less than the prevailing rate of interest being paid on deposits of private funds;

(f) unencumbered real property and first mortgages on unencumbered real property, provided that:

(i) no such mortgage shall be purchased unless:

(A) the principal amount of the loan secured by the mortgage is seventy-five percent (75%) or less of the appraised value of the property; or

(B) thirty percent (30%) or more of the loan secured is guaranteed or insured in the event of default by the United States of America or an agency thereof; or

(C) the mortgagor has leased the mortgaged property to a person, firm, or corporation whose rental payments under the lease are guaranteed for the full term of the loan by an agency of the United States; and

(ii) no investment shall be made at any time under subsection (f) which would cause the book value of such investments in any investment fund to exceed fifty percent (50%) of the book value of such fund.

(2) Investments from the pooled investment fund, shall be restricted to fixed income securities described in subsections (a) to (e) above.

(3) Retirement funds, only, may be invested in preferred and common stocks of any corporation organized and operating in any state of the United States, provided that:

(a) the corporation has assets of a value not less than ten million dollars (\$10,000,000); and

(b) if the investment is preferred stock, the corporation's aggregate earnings available for payment of interest and preferred dividends, for a period of five (5) consecutive years immediately before the date of investment, have been at least one and one-half (1 ½) times the aggregate of interest and preferred dividends required to be paid during this period; and

(c) if the investment is common stock,

(i) the stock has paid cash dividends in each of at least five (5) years immediately before it is purchased; and

(ii) the aggregate earnings of the corporation during this period which were available for payment of dividends on common stock were at least equal to the aggregate of the cash dividends paid thereon; and

(iii) not more than two percent (2%) of the assets of any retirement fund may be invested in common stocks or in fixed income securities convertible into common stock not conforming to the dividend and earnings standards stated in paragraphs (i) and (ii) above, so long as the corporation maintains the asset value required in subsection (a) and evidences appropriate growth potential and probable earnings gain; and

(d) no investment may be made at any time under subsection (3) which would cause the book value of such investments in any retirement fund to exceed twenty percent (20%) of the book value of such fund, or would cause the stock of one corporation to exceed one percent (1%) of the book value of such retirement fund."

Approved March 4, 1974

## CHAPTER NO. 93

AN ACT TO EXPAND THE DEFINITION OF HANDICAPPED TO INCLUDE EDUCATIONALLY HANDICAPPED PERSONS, TO REQUIRE MANDATORY SPECIAL EDUCATION SERVICES AFTER JULY 1, 1979, TO PROVIDE FOR THE ESTABLISHMENT OF SPECIAL EDUCATION SERVICES FOR EDUCATIONALLY HANDICAPPED PERSONS AND TO AMEND SECTIONS 75-7801, 75-7805, 75-7806, AND 75-7807, R.C.M. 1947.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 75-7801, R.C.M. 1947, is amended to read as follows:

"75-7801. **Definitions.** As used in this Title, unless the context clearly indicates otherwise:

"Special education" means the *kind* of instruction requiring special facilities or programs for mentally retarded or physically handicapped children or *for educationally handicapped persons*.

A "mentally retarded child" means any child who is not capable of profiting from the regular instruction of a school because his mental ability is substantially below the mental ability of an average child of the same age. Mentally retarded children are classified as follows:

(a) An "educable mentally retarded child" means a child who, at maturity, cannot be expected to attain a level of intellectual functioning greater than that commonly expected of an eleven-year-old child, but not less than that of a seven-year-old child.

(b) A "trainable mentally retarded child" means a child who, at matu-

city, cannot be expected to attain a level of intellectual functioning greater than that commonly expected of a seven-year-old child and, for entrance into a training program, is capable of walking, of clean body habits, and of obedience to simple commands.

(c) A "custodial mentally retarded child" means a child who does not show a likelihood of attaining clean body habits, responsiveness to directions, or means of intelligible communication.

A "physically handicapped child" means a child who is capable of profiting from the regular instruction with the assistance of special equipment, special services, or transportation to compensate for physical disabilities such as, but not limited to, cardiac impairment, cerebral palsy, chronic health problems, or inadequate speech, hearing or vision.

*An "educationally handicapped person" means a child or young adult under the age of twenty-one (21) years who requires special assistance to the extent that he cannot reasonably profit from the regular education program.*

*An educationally handicapped person's learning disorders include, but are not limited to, conditions which have been referred to as visual perception handicaps, brain injury, minimal brain dysfunction, dyslexia, behavioral maladjustment and emotional disturbances. An educationally handicapped person's disorders are not the result of problems with visual acuity, hearing impairment, physical handicaps, cultural or instructional factors, and mental retardation."*

Section 2. Section 75-7805, R.C.M. 1947, is amended to read as follows:

**"75-7805. Mandatory establishment of special education program**

**B. (1)** The trustees of any district shall establish and maintain at least one applicable special education *program* when there are ten (10) or more educable mentally retarded children in the district and at least one (1) applicable special education *program* when there are seven (7) or more trainable mentally retarded children in the district, and at least one (1) applicable special education *program* when there are ten (10) or more physically handicapped children in the district.

*After July 1, 1979, the board of trustees of every school district must provide or establish and maintain a special education program for every handicapped person as herein defined between the ages of six (6) and twenty-one (21) in the district who cannot benefit sufficiently from the regular programs of instruction by reason of his mental, physical, emotional or learning problems.*

*(2) The board of trustees of any school district may meet its obligation to serve handicapped persons by establishing its own special education program, by establishing a cooperative special education program, or by participating in a regional services program.*

*(3) Eligibility for enrollment in special education programs shall be determined under regulations of the superintendent of public instruction issued pursuant to policies adopted by the board of public education."*

Section 3. Section 75-7806, R.C.M. 1947, is amended to read as follows:

**"75-7806. Discretionary establishment of special education program.** The trustees of any district may establish and maintain a special education program for:

- (1) four (4) or more educable mentally retarded children;
- (2) four (4) or more physically handicapped children;
- (3) four (4) or more trainable mentally retarded children;
- (a) *four (4) or more educationally handicapped persons between the ages of six (6) and twenty-one (21);*
- (5) individual children requiring special education such as home or hospital tutoring, school-to-home telephone communication, or other individual programs; or
- (6) educable mentally retarded children, trainable mentally retarded children, *educationally handicapped children*, or physically handicapped children under the age of six (6) years of age when the superintendent of public instruction has determined that such programs will:
  - (a) assist a child to achieve levels of competence that will enable him to participate in the regular instruction of the district when he could not participate without special education;
  - (b) permit the conservation or early acquisition of skills which will provide the child with an equal opportunity to participate in the regular instruction of the district; or
  - (c) provide other demonstrated educational advantages which will materially benefit the child; or
- (7) educable mentally retarded persons, *educationally handicapped persons*, or physically handicapped persons who are not less than twenty-one (21) or more than twenty-five (25) years of age when the superintendent of public instruction has determined that such programs will assist a person to achieve levels of competence that will enable him to better participate in society;
- (8) *eligibility for enrollment in special education programs shall be determined under regulations of the superintendent of public instruction issued pursuant to policies adopted by the board of public education."*

Section 4. Section 75-7807, R.C.M. 1947, is amended to read as follows:

**"75-7807. Petition of parents for establishment of special education program.** The parents of four (4) or more *persons requiring* special education of *the kind provided* for educable mentally retarded children, trainable mentally retarded children, *educationally handicapped persons* or physically handicapped children may petition the *board of trustees* to establish a special education program. Parents residing in several districts may petition the *board of trustees* of each district to co-operatively establish a special education program of one *kind* for four (4) or more *persons*.

The interlocal co-operative agreement authorized in chapter 49 of Title 16, R.C.M. 1947, *may* be used to establish a multi-district special education program."

Approved March 4, 1974

## CHAPTER NO. 94

### AN ACT FOR REVISION OF THE LAWS RELATING TO THE DEPARTMENT OF MILITARY AFFAIRS.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 32-1702, R.C.M. 1947, is amended to read as follows:

"32-1702. **Powers and duties.** The *department of military affairs shall:*

(1) *Cooperate* with the agencies of this and other states and of the federal government which are connected with national defense, in the formulation and execution of plans for the rapid and safe movement over the highways of troops, vehicles of a military nature, and materials affecting the national defense.

(2) *Coordinate* the activities of the *department of highways and the department of justice* in a manner which will best serve to *carry out* any such plan for the rapid and safe movement of troops, vehicles, and materials as referred to in paragraph (1) of this section.

(3) *Solicit* the *cooperation* of officials of the various political subdivisions of the state in the proper execution of *these* plans.

(4) *Have the authority to take* an inventory, by counties, of the trucks and buses in the state, publicly and privately owned, which would be available in case of emergency affecting the national defense."

Section 2. Section 32-1703, R.C.M. 1947, is amended to read as follows:

"32-1703. **Highway safety and driver training program.** The *department of military affairs* may, in conjunction with any interested public or private agencies, conduct a highway safety and driver training program as an aid to the national defense."

Section 3. Section 77-801, R.C.M. 1947, is renumbered section 16-2927, and is amended to read as follows:

"16-2927. **County clerks to record certificates of discharge.** It is the duty of the county clerk of any county of *this* state to record, without charge, in a book kept for that purpose, the certificate of discharge of *an* honorably discharged person, regardless of sex, who served with the United States forces."



Section 4. Section 77-901, R.C.M. 1947, is renumbered section 75-8611, and is amended to read as follows:

**"75-8611. Honorably discharged veterans — free tuition at university of Montana.** All honorably discharged persons who served with the United States forces in any of its wars and who were bona fide residents of *this* state at the time of their entry into *the* United States forces shall have free fees and tuition in any of the units of the university of Montana, including the law and medical departments, and for extra studies in any of the units of the university of Montana. *However*, this act *does* not apply to persons who qualify under the provisions of the "Servicemen's Readjustment Act of 1944," being "Public Law 346 of the seventy-eighth Congress, chapter 268, second session" and "Public Law 16 of the seventy-eighth Congress, chapter 22, first session," and all acts supplementary and amendatory thereof."

Section 5. Section 77-909, R.C.M. 1947, is renumbered section 75-8612, and is amended to read as follows:

**"75-8612. War orphans' attendance to be without fees.** (1) *The board of regents of higher education may waive the charges for the matriculation, tuition, and any educational fees, for the children (of members of the armed forces of the United States who served on active duty during World War II or the Korean or Vietnam conflicts and who, at the time of entry into the service, had legal residence in this state and who were heretofore, or shall hereafter be, either killed in action or shall have died as a result of injury, disease, or other disability incurred while in the service of the armed forces of the United States) who attend any of the units of the greater university of Montana.*

(2) *The educational assistance to which an eligible person is entitled to under this act may be afforded him during the period beginning on his eighteenth (18) birthday, or on the successful completion of his secondary schooling, whichever first occurs, and ending on his twenty-third (23) birthday.*

(3) *If he serves on duty with the armed forces as an eligible person after his eighteenth (18) birthday but before his twenty-third (23) birthday, then the period shall end five (5) years after his first discharge or release from duty with the armed forces excluding from the five (5) years all periods during which the eligible person served on active duty before August 1, 1963, pursuant to (a) a call or order thereto issued to him as a reserve after July 30, 1961, or (b) an extension of an enlistment, appointment or period of duty with the armed forces under the laws of the United States. This period may not be extended beyond his thirty-first (31) birthday by reason of this paragraph."*

Section 6. Section 77-910, R.C.M. 1947, is renumbered section 75-8613, and is amended to read as follows:

**"75-8613. Board of regents of higher education to determine eligibility.** The board of *regents of higher education* shall determine the eligibility of *a child who makes application for the benefits provided for in this act. A finding by the United States veterans' administration that*

a member was killed in action or died as the result of injury or other disability incurred in action *is* binding upon *the* board, but in the absence of such a finding *the* board shall determine the facts."

Section 7. Section 77-911, R.C.M. 1947, is renumbered section 75-8614, and is amended to read as follows:

"75-8614. **Supervision of attendance and charges.** The board of *regents of higher education* shall satisfy itself of the attendance of a child at an institution."

Section 8. Section 77-1302, R.C.M. 1947, is renumbered section 77-2301, and is amended to read as follows:

"77-2301. **Policy and purpose.** Because of the existing and increasing possibility of the occurrence of disasters or emergencies of unprecedented size and destructiveness resulting from enemy attack, sabotage, or other hostile action, and natural disasters, and in order to insure that preparation of this state will be adequate to deal with such disasters or emergencies, and generally to provide for the common defense and to protect the public peace, health, and safety and to preserve the lives and property of the people of this state, it is hereby found and declared to be necessary:

(1) To authorize the creation of local organizations for civil defense in the political subdivisions of the state; and

(2) To provide for the rendering of mutual aid among the political subdivisions of the state, and with other states, and with the federal government with respect to carrying out of civil defense functions."

Section 9. Section 77-1303, R.C.M. 1947, is renumbered section 77-2302, and is amended to read as follows:

"77-2302. **Definitions.** As used in this *chapter* the term "civil defense" means the preparation for and the carrying out of emergency functions, other than functions for which military forces or other federal agencies are primarily responsible, to prevent, minimize, and repair injury and damage resulting from disasters caused by enemy attack, sabotage, or other hostile action, and catastrophes of all types which shall endanger any community in the state, or the lives or property of the inhabitants thereof, including storms, floods, explosions, earthquakes, epidemics, and fires. These functions include fire-fighting services, police services, medical and health services, rescue, engineering, air raid warning services, communications, radiological, chemical and other special weapons of defense, evacuation of persons from stricken areas, emergency welfare services (civilian war aid), emergency transportation, plant protection, temporary restoration of public utility services, and other functions related to civilian protection. The term "political subdivisions" means the counties, cities, towns and villages in *this* state."

Section 10. Section 77-1304, R.C.M. 1947, is renumbered section 77-2303, and is amended to read as follows:

"77-2303. **Responsibility for civil defense.** (a) *The department of military affairs* is responsible to the governor for carrying out the program for civil defense of this state. *The department* shall coordinate the

activities of all organizations for civil defense within the state, and maintain liaison with and *cooperate* with civil defense agencies and organizations of other states, of the federal government, and Canada, and have *any* additional authority, duties, and responsibilities authorized by this *chapter* as may be prescribed by the governor.

(b) In providing assistance *under this chapter*, state agencies shall *cooperate* to the fullest extent possible with each other and with local governments, relief agencies, and the American National Red Cross, but nothing contained in this *chapter* *limits* or in any way *affects* the responsibilities of the American National Red Cross under the act approved January 5, 1905 (33 Stat. 559), as amended."

Section 11. Section 77-1306, R.C.M. 1947, is renumbered section 77-2304, and is amended to read as follows:

"77-2304. **Civil defense duties of the governor.** The governor is responsible for carrying out this *chapter*. The governor shall utilize the services and facilities of the existing officers and agencies of the state, and all officers and agencies shall *cooperate* with and extend their services and facilities to the governor as he may request in the carrying out of the purposes of this *chapter*."

Section 12. Section 77-1307, R.C.M. 1947, is renumbered section 77-2305, and is amended to read as follows:

"77-2305. **Duties of department.** *The department shall:*

(1) *Prepare* a comprehensive plan and program for the civil defense of this state. *This* plan and program *shall* be integrated into and *coordinated* with the civil defense plans of the federal government, other states, and Canada, to the fullest possible extent, and to *coordinate* the preparation of plans and programs for civil defense by the political subdivisions of this state.

(2) *Sponsor* and develop mutual aid plans and agreements between the political subdivisions of the state, similar to the mutual aid arrangements with other states referred to above.

(3) In accordance with *the* plan and program for the civil defense of this state, ascertain the requirements of the state or the political subdivisions thereof for food or clothing or other necessities of life in the event of attack and plan for the procurement of supplies, medicine, materials, and equipment that may be necessary. *It shall* make surveys of the industries, resources and facilities within the state as are necessary to carry out the purposes of this act. *It shall* institute training programs and public information programs, and take all other preparatory steps, including the partial or full mobilizations of civil defense organizations in advance of actual disaster, to insure the furnishing of adequately trained and equipped forces of civil defense personnel in time of need."

Section 13. Section 77-1308, R.C.M. 1947, is renumbered section 77-2306, and is amended to read as follows:

"77-2306. **Mutual-aid arrangements.** (1) The director of each local organization of civil defense may develop or cause to be developed mutual-

aid arrangements, with other public and private agencies within this state for reciprocal civil defense aid and assistance in case of disaster too great to be dealt with unassisted. *These* arrangements shall be consistent with the state civil defense plan and program, and in time of emergency each local organization for civil defense *shall* render assistance in accordance with the provisions of *the* mutual-aid arrangements.

(2) The director of each local organization for civil defense may assist in negotiation of reciprocal mutual-aid agreements between the governor and the adjoining states (including foreign states or provinces) or political subdivisions thereof, and shall carry out arrangements or any such agreements or any such agreement relating to the local and political subdivision."

Section 14. Section 77-1309, R.C.M. 1947, is renumbered section 77-2307, and is amended to read as follows:

**"77-2307. Local organization for civil defense.** (1) Each political subdivision of this state *shall* establish a local organization for civil defense in accordance with the state civil defense plan and program. The executive officer or governing body of the political subdivisions *may* appoint a director who shall have direct responsibility for the organization, administration, and operation of *the* local organization for civil defense, subject to the direction and control of *the* executive officer or governing body. Each local organization for civil defense shall perform civil defense functions within the territorial limits of the political subdivisions within which it is organized.

(2) Each political subdivision shall:

(a) *Direct and coordinate* the development of civil defense plans and programs in accordance with the policies and plans set by the federal civil defense *agency and the department of military affairs*;

(b) *Appoint*, employ, remove, or provide without compensation, voluntary air raid wardens, rescue teams, auxiliary fire and police personnel, and other civilian defense workers;

(c) *Establish* a primary and one or more secondary control centers to serve as command posts during an emergency;

(d) *Budget* for and appropriate funds for the local administration of this *chapter* and local civil defense organizations."

Section 15. Section 77-1310, R.C.M. 1947, is renumbered section 77-2308, and is amended to read as follows:

**"77-2308. Immunity from liability.** (1) Neither the state nor any political subdivision of the state, nor the agents or representatives of the state or any political subdivision thereof, shall be liable for personal injury or property damage sustained by any person appointed or acting as a volunteer civilian defense worker, or member of any agency engaged in civilian defense activity. *This section does not affect the right of any person to receive benefits or compensation to which he might otherwise be entitled under the workmen's compensation law or any pension law or any act of Congress.*

(2) Neither the state nor any political subdivision of the state, nor, except in cases of willful misconduct, gross negligence, or bad faith, the employees, agents, or representatives of the state or any political subdivision thereof, nor any volunteer or auxiliary civilian defense worker or member of any agency engaged in civilian defense activity, *nor the owners of facilities used for civil defense shelters, pursuant to a fallout shelter license or privilege agreement and while* complying with or reasonably attempting to comply with this *chapter*, or any order, rule, or regulation promulgated *under* the provisions of this *chapter*, or pursuant to any ordinance relating to blackout or other precautionary measures enacted by any political subdivisions of the state, shall be liable for the death of or injury to persons, or for damage to property, as a result of any such activity."

Section 16. Section 77-1311, R.C.M. 1947, is renumbered section 77-2309, and is amended to read as follows:

**"77-2309. Authority to accept services, gifts, grants, and loans.** Whenever the federal government or any agency or officer thereof, or any person, firm, or corporation shall offer to the state, or through the state to any political subdivision thereof, services, equipment, supplies, materials, or funds by way of gift, grant, or loan, for purposes of civil defense, the state, acting through the governor, or *the* political subdivision, acting through its executive officer or governing body, may accept *the* offer and upon *the* acceptance the governor of the state or executive officer or governing body of *the* political subdivision may authorize any officer of the state or of the political subdivision, as the case may be, to receive *the* services, equipment, supplies, materials, or funds on behalf of the state or such political subdivision, and subject to the terms of the offer and the rules and regulations, if any, of the agency making the offer."

Section 17. Section 77-1312, R.C.M. 1947, is renumbered section 77-2310, and is amended to read as follows:

**"77-2310. Political activity prohibited.** *An organization for civil defense established under this chapter may not* participate in any form of political activity, nor *may* it be employed directly or indirectly for political purposes."

Section 18. Section 77-1313, R.C.M. 1947, is renumbered section 77-2311, and is amended to read as follows:

**"77-2311. Civil defense personnel.** A person *may not* be employed or associated in any capacity in any civil defense organization established under this *chapter* who advocates a change by force or violence in the constitutional form of the government of the United States or in this state or the overthrow of any government in the United States by force or violence, or who has been convicted of or is under indictment or information charging any subversive act against the United States. Each person who is appointed to serve in an organization for civil defense shall, before entering upon his duties, take an oath, in writing, before a person authorized to administer oaths in this state, which oath shall be substantially as follows:

"I ..., do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of Montana, against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter. And I do further swear (or affirm) that I do not advocate nor am I a member of any political party or organization that advocates the overthrow of the government of the United States or of this state by force or violence; and that during such time as I am a member of the Montana civil defense agency I will not advocate nor become a member of any political party or organization that advocates the overthrow of the government of the United States or of this state by force or violence."

Section 19. Section 77-1502, R.C.M. 1947, is renumbered section 77-2401, and is amended to read as follows:

"77-2401. **Legislative findings — policy of state.** (1) The legislature recognizes that an attack upon the United States is a possibility; that such attack might be of unprecedented size and destructiveness; that a considerable period of time may elapse after an attack before federal operational control over the management of resources can be instituted; and that federal planning and activities with respect to post-attack recovery and rehabilitation necessarily are predicated on the ability of the states and their political subdivisions to prepare for, and respond promptly to, the problems created by an attack. Therefore, it is hereby found and declared to be necessary *to confer upon the governor and upon the executive heads of governing bodies of political subdivisions of this state the emergency powers provided for in this chapter.*

(2) It is further declared to be the purpose of this *chapter* and the policy of this state that all resource management functions of this state be *coordinated* to the maximum extent with the comparable functions of the federal government, of other states and localities, and of private agencies to the end that the most effective preparation and use may be made of available man power, resources, and facilities in an emergency."

Section 20. Section 77-1503, R.C.M. 1947, is renumbered section 77-2402, and is amended to read as follows:

"77-2402. **Definition of terms.** *Unless the context requires otherwise, in this chapter:*

(1) "Emergency Resources Management Plan" *means* that plan prepared by the *department of military affairs*, approved by the federal office of emergency planning, and adopted by the governor, which sets forth the organization, administration, and functions for the emergency management by the state government of essential resources and economic stabilization within the state. The plan shall provide an emergency organization and emergency administrative policies and procedures for the conservation, allocation, distribution, and use of essential resources available to the state following a civil defense emergency such as an attack upon the United States. It shall be supplemental to the national plan for emergency preparedness adopted by the president of the United States, and

shall become operative upon the establishment of a civil defense emergency. To the extent that the federal government is either incapable of or not prepared to conduct its emergency resources management program, the state plan will substitute for and replace the federal program until such time as the federal program becomes effective in the state.

(2) "Enemy attack" means an actual attack by a foreign nation by hostile air raids, or other forms of warfare, upon this state or any other state or territory of the United States.

(3) "Political subdivision" means any county, city, town, or township of the state."

Section 21. Section 77-1505, R.C.M. 1947, is renumbered section 77-2403, and is amended to read as follows:

**"77-2403. Governor's powers and duties under act.** (1) The governor *has* general direction and control of the emergency resources management within this state and all officers, boards, agencies, individuals, or groups established under the emergency resource management plan.

(2) In performing his duties under this *chapter*, the governor *may cooperate* with the federal government, with other states, and with private agencies in all matters pertaining to the emergency management of resources.

(3) In performing his duties under this *chapter*, and to effect its policies and purpose, the governor *may* make, amend, and rescind the necessary orders, rules, and regulations to carry out this *chapter* within the limits of authority conferred upon him herein, with due consideration of the emergency resources management plans of the federal government."

Section 22. Section 77-1506, R.C.M. 1947, is renumbered section 77-2404, and is amended to read as follows:

**"77-2404. Proclamation of emergency — governor's powers during emergency.** (1) Following an attack, the governor, if he finds such action necessary to deal with the danger to the public safety caused thereby or to aid in the post-attack recovery or rehabilitation of the United States or any part thereof, shall declare by proclamation the existence of a post-attack recovery and rehabilitation emergency. Any such proclamation shall be ineffectual, unless the legislature is then in session or the governor simultaneously issues an order convening the legislature in special session within forty-five (45) days.

(2) During the period when the proclamation issued *under* subsection (1) of this section is in force, or during the continuance of any emergency declared by the president of the United States or the congress calling for post-attack recovery and rehabilitation activities, subject to the limitations set forth in this *chapter*, and in a manner consistent with any rules, regulations, or orders and policy guidance issued by the federal government, the governor may issue, amend, and enforce rules, regulations, and orders to:

(a) Control, restrict, and regulate by rationing, freezing, use of quotas, prohibitions on shipments, price fixing, allocation or other means, the use,

sale or distribution of food, feed, fuel, clothing and other commodities, materials, goods or services;

(b) Prescribe and direct activities in connection with but not limited to use, conservation, salvage, and prevention of waste of materials, services, and facilities, including production, transportation, power, and communication facilities, training and supply of labor, utilization of industrial plants, health and medical care, nutrition, housing, including the use of existing and private facilities, rehabilitation, education, welfare, child care, recreation, consumer protection, and other essential civil needs; and

(c) Take such other action as may be necessary for the management of resources following an attack.

(3) All rules, regulations, and orders issued *under* authority conferred by this *chapter* have the effect of law during the continuance of a proclamation or declaration of emergency as contemplated by this section, when a copy of the rule, regulation, or order is filed in the office of the secretary of state or, if issued by a local or area official, when filed in the office or offices of the county clerk and recorder. If, by reason of destruction or disruption attendant upon or resulting from attack, the filing requirements of this subsection cannot be met, public notice by such means as may be available shall be *considered* a complete and sufficient substitute. All existing laws, ordinances, rules, regulations, and orders inconsistent with the provisions of this *chapter*, or any rule, regulation or order issued under the authority thereof, shall be inoperative during the period of time and to the extent such inconsistency exists.

(4) Any authority exercised *under* a proclamation or emergency contemplated by this section may be exercised with respect to the entire territory over which the governor or other official, as the case may be, has jurisdiction, or as to any specified part thereof.

(5) The governor's power and authority to issue a proclamation following an attack shall be terminated by the passage of a joint resolution of the legislature or by declaration of the termination of the emergency by the president or by the congress; *however* the proclamation shall terminate automatically six (6) months after issuance and a similar proclamation may not be issued unless concurrence is given thereto by a joint resolution of the legislature."

Section 23. Section 77-1507, R.C.M. 1947, is renumbered section 77-2405, and is amended to read as follows:

**"77-2405. Judicial inquiry as to emergency proclamation and facts.** Every proclamation and the facts related *in the proclamation* issued under this *chapter* is subject to judicial inquiry by the state supreme court as to the existence of the facts underlying the issuance of the proclamation and whether *the* action was reasonable under the circumstances."

Section 24. Section 77-1508, R.C.M. 1947, is renumbered section 77-2406, and is amended to read as follows:

**"77-2406. Penalty for violation of rules and regulations.** A person violating any of the rules, regulations or orders adopted and promulgated



under section 77-2404 shall, upon conviction, be subject to a fine of not to exceed ten thousand dollars (\$10,000) or to a term of imprisonment of not to exceed five (5) years, or both."

Section 25. There is a new section to be numbered 77-1601, R.C.M. 1947, which reads as follows:

77-1601. **Definitions.** Unless the context requires otherwise, in Title 77:

(1) "Militia" means all the military forces of this state, whether organized or active or inactive.

(2) "National guard" means the army national guard and the air national guard.

(3) "Officer" means commissioned or warrant officer.

Section 26. There is a new section to be numbered 77-1602, R.C.M. 1947, which reads as follows:

77-1602. **Classes of militia.** The classes of the militia are:

(1) The organized militia, which consists of the national guard and the Montana home guard;

(2) The unorganized militia, which consists of the members of the militia who are not members of the organized militia.

Section 27. There is a new section to be numbered 77-1603, R.C.M. 1947, which reads as follows:

77-1603. **Federal regulations to govern.** Federal laws and regulations, forms, precedents, and usages relating to and governing the armed forces of the United States and the militia, including the Uniform Code of Military Justice, shall, insofar as they are applicable and not inconsistent with the constitution of this state, apply to and govern the military forces of this state.

Section 28. There is a new section to be numbered 77-1604, R.C.M. 1947, which reads as follows:

77-1604. **Rules by governor.** The governor may prescribe rules to carry out his functions and duties under this title, and the constitution of this state. These rules must conform to any applicable federal laws and regulations.

Section 29. There is a new section to be numbered 77-1605, R.C.M. 1947, which reads as follows:

77-1605. **Proclamation of martial rule.** When the militia is employed in aid of civil authority, the governor may by proclamation, declare any part of a county or municipality in which troops are serving to be subject to martial rule.

Section 30. There is a new section to be numbered 77-1606, R.C.M. 1947, which reads as follows:

77-1606. **Powers and duties of department of military affairs.**

Under the direction of the governor, the department of military affairs provided for in Title 82A, chapter 14 shall:

- (1) Keep a roster of all active, inactive, retired officers and enlisted persons of the militia of this state;
- (2) Supervise, administer, and coordinate civil defense and disaster control activities;
- (3) Recruit, mobilize, administer, train, discipline, equip, and supply the organized militia;
- (4) Maintain the archives, and keep the records and documents required, by law or regulation, to be filed with the United States department of defense;
- (5) Supervise, administer, and coordinate the activities of the selective service system for which the governor is responsible;
- (6) Establish and maintain the headquarters required for the militia;
- (7) Exercise the powers vested in it, and perform any other duty and function required of it by the governor, and by federal and state laws and regulations.

Section 31. There is a new section to be numbered 77-1701, R.C.M. 1947, which reads as follows:

77-1701. **Officers.** (1) The governor shall appoint all officers of the militia.

(2) Officers must be citizens of the United States.

(3) Before a person can be appointed an officer by the governor, he shall be examined and adjudged qualified to be an officer by an examining board. The composition, appointment, and examination procedure of the board, and the nature and scope of examinations, shall be prescribed by federal law or regulation, or state regulations.

(4) Each officer shall hold office under his appointment until he is regularly appointed to another grade or office, or until he is regularly retired, discharged, dismissed, or placed in the reserve.

Section 32. There is a new section to be numbered 77-1702, R.C.M. 1947, which reads as follows:

77-1702. **Oath of office.** (1) Except when a comparable oath is subscribed to under federal law or regulation, every officer shall take and subscribe to the following oath of office: "I,....., do solemnly swear that I will support and defend the constitution of the United States and the constitution of the state of Montana against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I will obey the orders of the president of the United States and the governor of the state of Montana; that I make this obligation freely, without any mental reservation or purpose of evasion, and that I will well and faithfully discharge the duties of the office of.....in the.....upon which I am about to enter, so help me God."

(2) If an officer refuses or neglects to take the oath, he shall be considered to have resigned the office, and a new appointment shall be made.

Section 33. There is a new section to be numbered 77-1703, R.C.M. 1947, which reads as follows:

**77-1703. Retirement of officers.** (1) An officer of the national guard shall be retired by order of the governor, for the following reasons:

- (a) Upon reaching his sixtieth (60) birthday; or
- (b) His unfitness for military service because of a physical disability.

(2) An officer is retired with the grade and rank held by him at the time of retirement.

Section 34. There is a new section to be numbered 77-1704, R.C.M. 1947, which reads as follows:

**77-1704. Resignation of officers.** An officer may resign, but the resignation is not effective until it has been accepted by the governor.

Section 35. There is a new section to be numbered 77-1705, R.C.M. 1947, which reads as follows:

**77-1705. Vacating commissions or warrants.** The commission or warrant of an officer shall be vacated:

(1) Upon acceptance by the governor of the resignation of the officer; or

(2) By an order of the governor discharging the officer for:

- (a) Failure to maintain his qualifications for federal recognition;
- (b) The scheduled or actual termination or withdrawal of his federal recognition where federal recognition is a prerequisite for continued service;
- (c) A change in federal reserve status which makes him ineligible to continue assigned to a unit of the organized militia;
- (d) His absence from duty without leave for more than three (3) months; or
- (e) Under the recommendation of a board of examination or the sentence of a court martial.

Section 36. There is a new section to be numbered 77-1706, R.C.M. 1947, which reads as follows:

**77-1706. Examination as to fitness.** (1) The governor, when he considers it necessary, may order an officer to appear before a board of examination. The board of examination shall consist of three (3) officers, senior in rank to the officer whose fitness for service is under examination. The board may:

(a) Inquire into the fitness for military service due to physical disability of an officer under section 77-1703 (1)(b).

(b) Inquire into the moral character, capacity, and professional fitness of an officer in order to make a recommendation under section 77-1705 (2)(e).

(2) The board, under section 77-1703 (1)(b), may recommend the retention of the officer being examined, or his retirement because of a physical inability to perform active service.

(3) The board, under section 77-1705 (2)(e), may recommend the discharge and the vacating of his commission or warrant.

(4) The findings of the board become effective only upon the approval of the governor.

Section 37. There is a new section to be numbered 77-1707, R.C.M. 1947, which reads as follows:

**77-1707. Uniform allowance for officers.** (1) Every officer of the organized militia shall, within sixty (60) days from the date of the order whereby he is appointed, provide himself, at his own expense, with the uniforms and equipment prescribed by the department for his rank and assignment.

(2) There shall be paid annually on April 1, a uniform allowance to each properly uniformed and equipped officer of the organized militia.

Section 38. There is a new section to be numbered 77-1708, R.C.M. 1947, which reads as follows:

**77-1708. Officer need not vacate civil office.** A person may be an officer in the militia or in a reserve component of the armed forces of the United States without vacating a civil office or position in this state.

Section 39. There is a new section to be numbered 77-1801, R.C.M. 1947, which reads as follows:

**77-1801. Terms of enlistment.** Except as otherwise provided by federal law or regulation, enlistments, re-enlistments, and extension of enlistments shall be for periods as prescribed by the department.

Section 40. There is a new section to be numbered 77-1802, R.C.M. 1947, which reads as follows:

**77-1802. Oath of enlistment.** (1) Except when a comparable oath of enlistment is subscribed to under federal law or regulation, every person who enlists or re-enlists shall take and subscribe to the following oath of enlistment: "I hereby acknowledge to have voluntarily enlisted this.... day of.....in the.....of the United States and the state of Montana for a period of.....years under the conditions prescribed by law, unless sooner discharged by proper authority. And I do solemnly swear that I will bear true faith and allegiance to the United States of American and to the state of Montana, and that I will serve them honestly and faithfully against all their enemies, and that I will obey the orders of the president of the United States, the governor of the state of Montana, and the officers appointed over me."

(2) Any commissioned officer of the organized militia, or any commis-

sioned officer of the armed forces of the United States detailed to duty with any component of the organized militia of this state, may administer the oath of enlistment to enlisted men.

Section 41. There is a new section to be numbered 77-1803, R.C.M. 1947, which reads as follows:

77-1803. **Extension of terms of service.** If an emergency is declared by the president, congress, the governor, or the legislature, the governor may by proclamation, in accordance with federal and state law and regulation, extend the enlistment of an enlisted member of the organized militia until six (6) months after the termination of that emergency.

Section 42. There is a new section to be numbered 77-1804, R.C.M. 1947, which reads as follows:

77-1804. **Retirement of enlisted members.** An enlisted member of the national guard shall be retired by order of the governor, for the following reasons:

- (1) Upon reaching his sixtieth (60) birthday, or
- (2) His unfitness for military service because of a physical disability.

Section 43. There is a new section to be numbered 77-1901, R.C.M. 1947, which reads as follows:

77-1901. **Courts — composition, jurisdiction, powers, and procedures.** The military courts for the militia shall be constituted like similar courts of the armed forces of the United States. They have the jurisdiction and powers, except as to punishments, and shall follow the forms and procedures of those courts. The convening authority for these military courts, and maximum punishments authorized shall be as prescribed by federal and state law and regulation applicable to the national guard.

Section 44. There is a new section to be numbered 77-1902, R.C.M. 1947, which reads as follows:

77-1902. **Persons subject.** All members of the organized militia, and all other persons lawfully called, ordered, or drafted for duty in the organized militia from the dates they are required by the terms of the call, order, or other directive to serve, are subject to this chapter.

Section 45. There is a new section to be numbered 77-1903, R.C.M. 1947, which reads as follows:

77-1903. **Territorial applicability.** (1) This chapter is applicable in all places in this state. It also applies to all persons while serving outside this state and while going to and returning from service outside this state.

(2) Courts-martial and courts of inquiry may be convened and held in units of the organized militia while serving outside this state. These courts serve with the same jurisdiction and powers as if held in this state. Offenses committed outside this state may be tried and punished either in or out of this state.

Section 46. There is a new section to be numbered 77-1904, R.C.M. 1947, which reads as follows:

**77-1904. Persons authorized to execute process.** All processes, writs, warrants, and sentences of military courts shall be directed to and executed by any sheriff, or any officer or member of the police department of any county or municipality. These documents shall be in the same form as processes, writs, or warrants issued by civil courts. All officers to whom a process, writ, or warrant is directed shall execute them and make return thereof to the officer issuing them.

Section 47. There is a new section to be numbered 77-1905, R.C.M. 1947, which reads as follows:

**77-1905. Confinement of persons committed by military court.** The keepers of a municipal or county jail shall receive a person committed to them by a military court, and shall confine them in accordance with the direction of the court.

Section 48. There is a new section to be numbered 77-1906, R.C.M. 1947, which reads as follows:

**77-1906. Reporter and witness fees.** A witness subpoenaed to appear before a military court shall receive the same fee as provided by law for witnesses appearing in a civil court. The reporter of a court shall be paid for stenographic services the same as are provided by law for similar services in civil courts.

Section 49. There is a new section to be numbered 77-1907, R.C.M. 1947, which reads as follows:

**77-1907. Fees of civil officers, records.** Fees for services of civil officers shall be the same as provided by law for services in civil courts. Records of all fees, costs, and disbursements shall be kept in the headquarters of the organization concerned.

Section 50. There is a new section to be numbered 77-1908, R.C.M. 1947, which reads as follows:

**77-1908. Trial by civil authority; when authorized.** In a case where the offense charged is also an offense against civil authority, the convening authority of a court martial may, upon request of the civil authorities, order the person charged to be turned over to the appropriate civil authorities of this state for trial.

Section 51. There is a new section to be numbered 77-2001, R.C.M. 1947, which reads as follows:

**77-2001. Property remains public property.** All property issued to organizations and members of the organized militia remains public property.

Section 52. There is a new section to be numbered 77-2002, R.C.M. 1947, which reads as follows:

**77-2002. Organized militia called into service — general fund.** When the organized militia is ordered into active duty as provided for in article VI, section 13 of the constitution of this state, warrants for pay and expenses shall be drawn upon the general fund of the state.

Section 53. There is a new section to be numbered 77-2003, R.C.M. 1947, which reads as follows:

**77-2003. Pay and allowances.** (1) An officer ordered into active duty as provided for in article VI, section 13 of the constitution of this state, shall receive pay and allowances as prescribed for an officer of corresponding grade and length of service when on active duty in federal service.

(2) An enlisted member ordered into active duty as provided for in article VI, section 13 of the constitution of this state, shall receive pay at rates equivalent to twice those allowed for an enlisted member of corresponding grade and length of time when on active duty in federal service. This schedule of pay for enlisted members applies only to the first fifteen (15) days of service. After fifteen (15) days, an enlisted member shall receive the pay and allowances as prescribed for an enlisted member of corresponding grade when on active duty in federal service.

(3) The pay and allowances provided for in this section may not be paid when pay and allowances for the active duty are provided out of federal funds.

Section 54. There is a new section to be numbered 77-2004, R.C.M. 1947, which reads as follows:

**77-2004. Allowances for incidental expenses.** Each commanding officer may receive an allowance for the incidental expenses of his command.

Section 55. There is a new section to be numbered 77-2005, R.C.M. 1947, which reads as follows:

**77-2005. Pensions — benefits.** (1) A member of the organized militia who is wounded, disabled, or dies while on duty in the service of this state shall receive the same benefits that would have been received if the member had been in federal service. However, no benefits may be granted or paid to a member if the member receives a similar benefit from the federal government for the injuries or death sustained while on duty.

Section 56. There is a new section to be numbered 77-2006, R.C.M. 1947, which reads as follows:

**77-2006. Armories.** (1) A county, city, or town may convey or lease real property to the state for armories or other military facilities.

(2) A county, city, or town in which a unit of the national guard is organized and regularly stationed may provide any part of the funds to build an armory. The armory must be of sufficient size, and suitable for the drill of the unit.

Section 57. There is a new section to be numbered 77-2007, R.C.M. 1947, which reads as follows:

**77-2007. Lease of real property for armories, etc.** The department of military affairs may lease real property for armories or other military facilities.

Section 58. There is a new section to be numbered 77-2101, R.C.M. 1947, which reads as follows:

**77-2101. Actions against members of the organized militia.** When an action is commenced in a court against a member of the organized militia for an act done in his official capacity in the discharge of his duty, or for an alleged omission to do an act which it was his duty to perform, the defendant shall be defended by the attorney general at the expense of this state, but private counsel may be employed by the defendant.

Section 59. There is a new section to be numbered 77-2102, R.C.M. 1947, which reads as follows:

**77-2102. Right-of-way while performing military duty.** (1) The commanding officer of a unit of the organized militia parading or performing any military duty in a street or highway may require all persons on the street or highway to yield the right-of-way to troops. Motor vehicles traveling in military convoy shall be accorded the right-of-way on all streets and highways.

(2) The exercise of the right-of-way provided for in this section may not interfere with the carriage of the United States mail, or with the progress of an ambulance, or members of a police or fire department.

(3) A person who violates this section is guilty of a misdemeanor.

Section 60. There is a new section to be numbered 77-2103, R.C.M. 1947, which reads as follows:

**77-2103. Depriving members of the organized militia of employment.** (1) A person may not willfully deprive a member of the organized militia of his employment or prevent his being employed, or obstruct or annoy a member in respect to his trade, business, or employment, because he is a member of the organized militia.

(2) A person may not dissuade any person from enlisting in the organized militia, by threatening to injure, or injuring his business, employment, or trade.

(3) A person who violates this section is guilty of a misdemeanor.

Section 61. There is a new section to be numbered 77-2104, R.C.M. 1947, which reads as follows:

**77-2104. Leave of absence of state employees attending training camp or similar training program.** A state, city, or county employee who is a member of the organized militia of this state or who is a member of the organized or unorganized reserve corps or military forces of the United States, and who has been an employee for a period of six (6) months, shall be given leave of absence with pay for a period of time not to exceed fifteen (15) working days in a calendar year for attending regular encampments, training cruises, and similar training programs of the organized militia or of the military forces of the United States. This leave may not be charged against the employee's annual vacation time.

Section 62. There is a new section to be numbered 77-2105, R.C.M. 1947, which reads as follows:

**77-2105. Authority of commanding officer.** The commanding officer



at any drill, parade, encampment, or other duty may order those under his command to perform any military duty he requires. The commanding officer may arrest, for the time of the drill, parade, encampment, or other duty, an officer or enlisted man who disobeys the orders of his superior officer.

Section 63. There is a new section to be numbered 77-2106, R.C.M. 1947, which reads as follows:

**77-2106. Trespassers and disturbers may be placed in arrest.** (1) The commanding officer may arrest or authorize the arrest of a person who trespasses upon a camp or parade ground, armory, arsenal, rifle range, or any other place devoted to or used for military purposes.

(2) The commanding officer may arrest a person who interrupts, molests, or disturbs the orderly discharge of duty by those under arms, disturbs or prevents the passage of troops going to or returning from any duty, or assaults a member of the uniformed militia while that member is performing any military duty.

(3) A person who is arrested under this section shall be transferred to the civil authorities in the county where the offense was committed.

(4) A person violating this section is guilty of a misdemeanor.

Section 64. There is a new section to be numbered 77-2107, R.C.M. 1947, which reads as follows:

**77-2107. Unlawful sale or detention of military property.** A person may not conceal, sell, dispose of, offer for sale, purchase, retain after demand made by an officer, or in any manner pledge or pawn any arms, equipment, or other military property issued by the United States or this state for use of the militia. A person violating this section is guilty of a misdemeanor.

Section 65. There is a new section to be numbered 77-2108, R.C.M. 1947, which reads as follows:

**77-2108. Unlawful wearing of uniform.** A person may not wear the uniform or insignia issued or authorized for use by the organized militia, who is not a member of the organized militia. A person violating this section is guilty of a misdemeanor.

Section 66. There is a new section to be numbered 77-2201, R.C.M. 1947, which reads as follows:

**77-2201. Organization and composition.** The home guard may be organized, maintained, and disbanded at the discretion of the governor, in accordance with federal law and regulation, when additional defense forces are needed in this state. The home guard shall be composed of officers assigned to it, and any able-bodied citizen of this state who volunteers to serve in it. If additional persons are needed in the home guard, members of the unorganized militia shall serve if enrolled by draft or otherwise as provided by law and regulation.

Section 67. There is a new section to be numbered 77-2202, R.C.M. 1947, which reads as follows:

77-2202. **Governor may prescribe rules.** The home guard shall be organized, armed, equipped, maintained, disciplined, governed, administered, and trained under rules prescribed by the governor. These rules shall conform to federal law and regulations.

Section 68. There is a new section to be numbered 77-2203, R.C.M. 1947, which reads as follows:

77-2203. **Use of armories and equipment.** The governor may make available to the home guard the facilities of state armories and their equipment and any other state land and property as may be available. The governor may requisition from the federal government for the use of the home guard, arms, ammunition, clothing, equipment, and other items in accordance with federal law and regulations. The governing body of a county, municipality, or school district may make available to the home guard any premises, facilities, equipment, or other property belonging to or under the control of the county, municipality, or school district.

Section 69. There is a new section to be numbered 77-2204, R.C.M. 1947, which reads as follows:

77-2204. **Pay — allowances — pensions — benefits.** (1) An officer or member of the home guard on active duty in the service of this state shall receive the same pay and allowances as prescribed for officers and enlisted members of the militia under section 77-2003.

(2) A member of the home guard who is wounded, disabled, or dies while on active duty in the service of this state, shall receive the same pensions and benefits as prescribed for members of the organized militia under section 77-2005.

Section 70. Section 82A-1401, R.C.M. 1947, is amended to read as follows:

"82A-1401. **Department of military affairs — head.** There is a department of military affairs. The department head is the adjutant general of the state, who shall be appointed and serve in the same manner as are directors in section 82A-106. *In addition, the adjutant general shall have the qualifications as prescribed in section 82A-1405.*"

Section 71. There is a new section to be numbered 82A-1405, R.C.M. 1947, which reads as follows:

82A-1405. **Adjutant general — qualifications — salary — acting adjutant general.** (1) The adjutant general shall:

- (a) Have the rank of major general;
- (b) Be selected from the active list of the national guard of this state;
- (c) Be federally recognized in the rank of lieutenant colonel or higher, immediately preceding his appointment;
- (d) Have had at least ten (10) years of service as an officer of the active national guard of this state during the fifteen (15) years immediately preceding his appointment.

(2) A salary may not be paid to the adjutant general by the state, when he is on extended active duty in federal service, or is receiving pay as a civilian employee of the federal government.

(3) If, by reason of call or draft of officers of the Montana national guard into federal service, there is no officer having the qualifications as set forth in this section for adjutant general, then any officer of the national guard may be appointed as acting adjutant general.

Section 72. There is a new section to be numbered 82A-1406, R.C.M. 1947, which reads as follows:

**82A-1406. Assistant adjutant generals.** (1) The adjutant general shall appoint, with the approval of the governor, an assistant adjutant general for the army national guard to be selected from the active list of the army national guard, and an assistant adjutant general for the air national guard to be selected from the active list of the air national guard.

(2) Each assistant adjutant general shall have the qualifications set forth in section 82A-1405 for appointment as adjutant general. However, they shall have the rank of brigadier general.

Section 73. Sections 32-1701, 77-101 through 77-163, 77-201 through 77-214, 77-301, 77-401 through 77-420, 77-1101, 77-1201 through 77-1215, 77-1301, 77-1305, 77-1501, 77-1504, 82-207 through 82-211, 82A-1402 through 82A-1404, R.C.M. 1947, are repealed.

Approved March 11, 1974

## CHAPTER NO. 95

AN ACT AMENDING SECTION 92-208, R.C.M. 1947, RELATING TO THE DISCRETION OF THE DIVISION OF WORKMEN'S COMPENSATION TO REVIEW A CORPORATE OFFICER'S ELECTION NOT TO BE BOUND; AND PROVIDING A PENALTY FOR FALSE STATEMENTS.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 92-208, R.C.M. 1947, is amended to read as follows:

"92-208. **Employees bound by act — election.** Every employee whose employer is bound by the provisions of this act shall become subject to and be bound by the provisions of that plan of compensation which shall have been adopted by his employer except that pursuant to such rules and regulations as the *division* shall from time to time promulgate, and subject in all cases to the *review* of the *division*, officers of private corporations may elect not to be bound as employees under the act by a written notice in the form provided by the *division*, served in the following manner:

(1) If the employer has elected to be bound by the provisions of

compensation plan No. 1, by delivering said notice to the board of directors of the employer.

(2) If the employer has elected to be bound by the provisions of compensation plan No. 2, by delivering said notice to the board of directors of the employer or the insurer.

(3) If the employer has elected to be bound or is bound by the provisions of compensation plan No. 3, by delivering said notice to the *division of workmen's compensation*.

(4) *The appointment or election of an officer of a corporation for the purpose of excluding an employee from coverage under the act shall not entitle such officer to elect not to be bound as an employee under the act.*

*In any case, the notice shall be signed by the officer under oath or equivalent affirmation and is subject to the penalties for false swearing.*

(5) *The division shall review any officers of private corporation's election not to be bound as an employee to assure compliance with this act."*

Approved March 11, 1974

## CHAPTER NO. 96

AN ACT REQUIRING INSURED PERSONAL PROPERTY LOSSES TO BE COMPUTED AT THE VALUATIONS STATED IN THE POLICY WHEN SUCH VALUATIONS AFFECT THE PREMIUM.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is a new section to be numbered 40-4303, R.C.M. 1947, which reads as follows:

**40-4303. Personal property — when loss computation to be based on specific valuation.** This section applies to policies, except motor vehicle insurance policies, which insure specific listed items of personal property against any loss or damage. If the insurer places specific valuations upon particular items of covered property and bases the premium charge on these valuations, then he shall compute any loss or total damage to the property, when covered, at the stated valuation with no deductions or offsets. An insurer who wishes to vary this requirement and use a different method for computation of loss, the policy and any application for such a policy shall set forth in type of prominent size the actual method of loss computation to be employed.

Approved March 11, 1974

## CHAPTER NO. 97

AN ACT AUTHORIZING THE BOARD OF NURSES TO LICENSE

REGISTERED NURSES AS MIDWIVES, AND AMENDING SECTION  
66-1012, R.C.M. 1947.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 66-1012, R.C.M. 1947, is amended to read as follows:

**"66-1012. Practice of medicine defined—exemptions from licensing requirements.** (1) For the purpose of this act the term "practice of medicine" shall mean:

(a) the practice of medicine by any person shall mean the diagnosis, treatment or correction of, or the attempt to, or the holding of oneself out as being able to diagnose, treat or correct any and all human conditions, ailments, diseases, injuries or infirmities, whether physical or mental, by any means, method, devices or instrumentalities.

If any person who does not possess a license to practice medicine within this state, as in this act provided, and who shall not be exempted from the licensing requirements hereunder, shall do any of the acts hereinabove mentioned as constituting the practice of medicine, he shall be deemed to be practicing medicine without complying with the provisions of this act and in violation thereof.

(2) Nothing herein shall be construed to prohibit, or to require a license hereunder with respect to, any of the following acts:

(a) the gratuitous rendering of services in cases of emergency and catastrophe or either of them;

(b) the rendering of services in this state by a physician lawfully practicing medicine in another state or territory, provided, that if any such physician does not limit such services to an occasional case or if he has any established or regularly used hospital connections in this state or if he maintains or is provided with, for his regular use, any office or other place for the rendering of such services, he must possess a license to practice medicine in this state;

(c) the practice of dentistry under the conditions and limitations defined by the laws of this state as now or hereafter enacted;

(d) the practice of chiropody (podiatry) under the conditions and limitations defined by the laws of this state as now or hereafter enacted;

(e) the practice of optometry under the conditions and limitations defined by the laws of this state as now or hereafter enacted;

(f) the practice of osteopathy under the conditions and limitations defined in sections 66-1401 to 66-1413, inclusive, of the Revised Code of Montana, 1947, as amended or as hereafter amended, for those doctors of osteopathy who do not receive a physician's certificate under this act;

(g) the practice of chiropractic under the conditions and limitations defined by the laws of this state as now or hereafter enacted;

(h) the practice of Christian Science, with or without compensation; and ritual circumcisions by rabbis;

(i) the performance by commissioned medical officers of the armed forces of the United States of America or of the United States public health service or of the United States veterans administration of their lawful duties in this state as such officers;

(j) the rendering of nursing services by registered or other nurses in the lawful discharge of their duties as such, *or of midwife services by registered nurse-midwives under the supervision of a licensed physician*;

(k) the rendering of services by interns or resident physicians in a hospital or clinic in which they are training, except as otherwise provided herein, subject to the conditions and limitations provided by this act;

(l) the rendering of services by a physical therapist, technician, or other paramedical specialist, under the personal and responsible direction and supervision of a person licensed under the laws of this state to practice medicine, but nothing in this exemption shall be deemed to extend the scope of any such paramedical specialist; and

(m) the practice by persons licensed under any law of this state as now or hereafter enacted to practice a limited field of the healing arts and not hereinbefore specifically designated, under the conditions and limitations defined by such law;

Provided, however, that all licensees in this subsection (2) designated or referred to, who are licensed to practice a limited field of healing arts, shall confine themselves to the field for which they are licensed or registered and to the scope of their respective licenses, and shall not use the title M.D., or any word or abbreviation to indicate, or to induce others to believe that he or she is engaged in the diagnosis or treatment of persons afflicted with disease, injury or defect of body or mind except to the extent and under the conditions expressly provided by the law under which they are licensed."

Section 2. There is a new section to be numbered 66-1246, R.C.M. 1947, which reads as follows:

**66-1246. Licensing of midwives.** (1) A person licensed under section 66-1228 who holds a certificate in nurse-midwifery from the American College of Nurse-Midwives may practice midwifery upon approval by the board-professional nursing administration of an amendment to her license granting a certificate of nurse-midwifery. The board shall grant a certificate of nurse-midwifery to a person who submits written verification of her certification by the American College of Nurse-Midwives and who meets such other qualification requirements as the board may prescribe.

(2) The board-professional nursing administration may give temporary approval to practice nurse-midwifery for up to four (4) months to a person who has taken the American College of Nurse-Midwives national certification examination, pending her receipt of official notification of the results of the examination.

Approved March 11, 1974

## CHAPTER NO. 98

### AN ACT REVISING THE STATUTES GOVERNING THE OPERATION

AND FINANCIAL MANAGEMENT OF CEMETERIES, AND AMENDING SECTIONS 9-111, 9-128, 9-131, 9-132, 9-227, AND 9-921, R.C.M. 1947.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 9-111, R.C.M. 1947, is amended to read as follows:

**"9-111. Association may take land by purchase or gift — use of personal property gifts.** Any association incorporated agreeably to the provisions of this act may take by purchase or gift, and hold, within the county in which the certificate of their incorporation is recorded, land to be held and occupied exclusively for a cemetery for the burial of the dead, and for purposes necessary or proper thereto; such land, or such portion thereof as may from time to time be required for that purpose, shall be surveyed and divided into lots of such size as the trustees may direct, with such avenues, alleys and walks as the said trustees deem proper; and a map of such survey shall be filed and recorded in the office of the county clerk and recorder of the county in which the lands lie, without any fees therefor. Such association may also take by gift and hold personal property, and may sell the same and apply the proceeds thereof to the care, maintenance and embellishment of said cemetery, but for no other purpose, and all real and personal estate which shall have been given or granted to any such association for the maintenance of any monument, the keeping in good order, or the embellishment of any lot or ground situated within the inclosure of such an association, shall remain forever to the uses for which the same shall have been given or granted, according to the true intent of the grantor. Any city or town in or near which a cemetery is maintained under the provisions of this act, may furnish water to be used within such cemetery and for its maintenance and beautification free of charge to such cemetery association if such city or town shall so elect."

Section 2. There is a new section to be numbered 9-111.1, R.C.M. 1947, which reads as follows:

**9-111.1. Local government approval — need — financial responsibility.** Before commencing operations under this chapter, an association shall comply with the planning and zoning requirements of the city or county, or the city and county jointly, as may be required by law, and shall demonstrate to such unit or units of local government that a need exists for the proposed cemetery and that the association has the financial capability required to operate a cemetery in a satisfactory manner.

Section 3. Section 9-128, R.C.M. 1947, is amended to read as follows:

**"9-128. Transfer of funds.** From and after the passage and approval of this act, the trustees of such cemetery association as are mentioned in section 9-121 shall provide by resolution, spread upon the minutes of such association, for the transfer to the trustees of such "permanent care

and improvement fund," of not less than fifteen percent of the moneys received from the sale of cemetery lots by said association, together with all moneys theretofore or thereafter received from the owners of lots for the care of such lots; and such transfer of any such funds then on hand shall then and there be made; such transfers shall be made thereafter quarterly, upon the first days of January, April, July, and October of each year, to the trustees of such fund. If at any time there shall remain in the hands of such association unexpended money, over and above the liabilities of the association, the board of trustees of such association may, by a two-thirds vote, appropriate the whole or any portion of such unexpended moneys to such "permanent care and improvement fund."

Section 4. Section 9-131, R.C.M. 1947, is amended to read as follows:

"9-131. **Investment of fund.** The principal of such fund may be invested in the way in which *public employees' retirement* funds are permitted to be invested in the state of Montana *as prescribed by section 79-310*, and not otherwise; provided that each investment made by the trustee or by the board of trustees shall be subject to the approval of the board of trustees of the cemetery association."

Section 5. Section 9-132, R.C.M. 1947, is amended to read as follows:

"9-132. **Compensation of trustees.** The trustee or the members of the board of trustees of such permanent care and improvement fund shall receive such compensation as may be agreed upon between such trustee or between such board of trustees of such permanent care and improvement fund on the one hand and the board of trustees of the cemetery association on the other. The fees of such trustee or of the members of the board of trustees shall be paid out of the general fund of the cemetery association until such trust fund shall reach ten thousand dollars (\$10,000) and thereafter the same shall be paid out of the income of such fund."

Section 6. Section 9-227, R.C.M. 1947, is amended to read as follows:

"9-227. **Investment of principal.** The principal of such fund may be invested in the way in which *public employees' retirement* funds are permitted to be invested in the state of Montana and not otherwise; provided that each investment made by the trustee or by the board of trustees shall be subject to the approval of the board of trustees of the public cemetery district."

Section 7. Section 9-921, R.C.M. 1947, is amended to read as follows:

"9-921. **Investment of fund.** The endowment care funds shall be invested, reinvested and kept invested in securities which are legal investments for *public employees' retirement* funds under the laws of the state of Montana *whenever monies are received by any corporation or association for merchandise sold by such corporation or association for future delivery, a merchandise trust fund shall be established and the wholesale cost of said merchandise deposited therein. The trustees shall administer this trust fund in accordance with this chapter. Upon delivery of said merchandise to the purchaser, the monies on deposit therefor shall be paid to the corporation or association.*"

Approved March 11, 1974



**CHAPTER NO. 99**

AN ACT TO AMEND SECTION 82A-1602, R.C.M. 1947, TO CHANGE THE NAME OF THE BOARD OF NURSES TO THE BOARD OF NURSING.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 82A-1602, R.C.M. 1947, is amended to read as follows:

"82A-1602. **Department — agencies transferred to.** The following agencies are continued, are transferred to the department for administrative purposes only as prescribed in section 82A-108 of this act, and are renamed as indicated:

(1) Abstracters board of examiners, created in Title 66, chapter 21, R.C.M. 1947, renamed the board of abstracters. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the abstracters board of examiners means the board of abstracters.

(2) State board of public accountancy, created in Title 66, chapter 18, R.C.M. 1947, renamed the board of public accountants. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state board of public accountancy means the board of public accountants.

(3) Board of architectural examiners, provided for in Title 66, chapter 1, R.C.M. 1947, renamed the board of architects. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the board of architectural examiners means the board of architects.

(4) State athletic commission, created in Title 82, chapter 3, R.C.M. 1947, renamed the board of athletics. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state athletic commission means the board of athletics.

(5) Board of barber examiners, created in Title 66, chapter 4, R.C.M. 1947, renamed the board of barbers. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the board of barber examiners means the board of barbers.

(6) State board of chiropody medical examiners or the board of chiropodists created in Title 66, chapter 6, R.C.M. 1947, and renamed in section 1, chapter 272, Laws of Montana, 1971, is renamed the state board of podiatry examiners. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state board of chiropody medical examiners or the board of chiropodists means the state board of podiatry examiners.

(7) State board of chiropractic examiners, created in Title 66, chapter 5, R.C.M. 1947, renamed the board of chiropractors. Unless inconsistent

with this act, any reference in the Revised Codes of Montana, 1947, to the state board of chiropractic examiners means the board of chiropractors.

(8) Montana state examining board of cosmetology, created in Title 66, chapter 8, R.C.M. 1947, renamed the board of cosmetologists. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana state examining board of cosmetology means the board of cosmetologists.

(9) State board of dental examiners of the state of Montana, created in Title 66, chapter 9, R.C.M. 1947, renamed the board of dentists. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state board of dental examiners of the state of Montana means the board of dentists.

(10) State electrical board, created in Title 66, chapter 28, R.C.M. 1947, renamed the board of electricians. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state electrical board, except the references relating to the functions of making inspections of electrical installations and issuing tags and charging fees therefor or of establishing an electrical code, transferred to the department of justice in chapter 12 of this act, means the board of electricians.

(11) State board of registration for professional engineers and land surveyors, created in Title 66, chapter 23, R.C.M. 1947, renamed the board of professional engineers and land surveyors. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state board of registration for professional engineers and land surveyors means the board of professional engineers and land surveyors.

(12) Montana board of hearing aid dispensers, created in Title 66, chapter 30, R.C.M. 1947, renamed the board of hearing aid dispensers. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana board of hearing aid dispensers means the board of hearing aid dispensers.

(13) Montana horse racing commission, created in Title 62, chapter 5, R.C.M. 1947, renamed the board of horse racing. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana horse racing commission means the board of horse racing.

(14) State board of massage examiners, created in Title 66, chapter 29, R.C.M. 1947, renamed the board of masseurs. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state board of massage examiners means the board of masseurs.

(15) Montana state board of medical examiners, created in Title 66, chapter 10, R.C.M. 1947, and renamed the board of medical doctors in section 1, chapter 272, Laws of Montana, 1971, is renamed the Montana state board of medical examiners. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana state board of medical examiners or the board of medical doctors means the Montana state board of medical examiners.

(16) State board of morticians, created in Title 66, chapter 27, R.C.M.

1947, renamed the board of morticians. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the board of morticians means the board of morticians.

(17) State board of examiners for nursing home administrators, created in Title 66, chapter 31, R.C.M. 1947, renamed the board of nursing home administrators. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state board of examiners for nursing home administrators means the board of nursing home administrators.

(18) Montana state board of nursing, created in Title 66, chapter 12, R.C.M. 1947, *and* renamed the board of nurses *in section 1, chapter 272, Laws of Montana, 1971, is renamed the board of nursing.* Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana state board of nursing *or* the board of nurses *means the board of nursing.*

(19) Montana state board of examiners in optometry, created in Title 66, chapter 13, R.C.M. 1947, renamed the board of optometrists. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana state board of examiners in optometry means the board of optometrists.

(20) State board of osteopathic examiners, provided for in Title 66, chapter 14, R.C.M. 1947, renamed the board of osteopaths. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state board of osteopathic examiners means the board of osteopaths.

(21) Montana state board of pharmacy, created in Title 66, chapter 15, R.C.M. 1947, renamed the board of pharmacists. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana state board of pharmacy means the board of pharmacists.

(22) Board of plumbing examiners (or the state plumbing board), provided for in Title 66, chapter 24, R.C.M. 1947, renamed the board of plumbers. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the board of plumbing examiners or the state plumbing board means the board of plumbers.

(23) Montana real estate commission, created in Title 66, chapter 19, R.C.M. 1947, renamed the board of real estate. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana real estate commission means the board of real estate.

(24) State board of veterinary medical examiners, created in Title 66, chapter 22, R.C.M. 1947, renamed the board of veterinarians. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state board of veterinary medical examiners means the board of veterinarians.

(25) Board of certification for water and waste water operators, provided for in Title 69, chapter 59, R.C.M. 1947, renamed the board of water and waste water operators. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the board of certification for water and waste water operators means the board of water and waste water operators.

(26) Water well contractors' examining board of the state of Montana, created in Title 66, chapter 26, R.C.M. 1947, renamed the board of water-well contractors. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the water-well contractors' examining board of the state of Montana means the board of water-well contractors."

## CHAPTER NO. 100

### AN ACT TO AMEND SECTION 23-4007, R.C.M. 1947, BY PROVIDING FOR DISPOSITION OF BALLOTS BY REGISTRAR.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 23-4007, R.C.M. 1947, is amended to read as follows:

"23-4007. **Disposition of items by registrar.** (1) When the registrar receives the packages or envelopes, he shall file those containing the ballots voted and detached stubs and the unused ballots and keep them unopened for twelve (12) months. After twelve (12) months, if there is no contest begun in a court or no recount, he shall, *without opening them or examining their contents*, either burn the envelopes in an approved incinerator, destroy them in a mechanical shredder, or bury them in a sanitary landfill under his on-site supervision.

(2) The registrar shall file the envelopes or packages containing the precinct registers, certificates of registration, pollbooks, tally sheets, and oaths of election officers. He shall keep them unopened until the commissioners meet to canvass the returns. The commissioners shall open the envelopes or packages.

(3) Immediately after the returns are canvassed, the registrar shall file the pollbooks, election records, and the papers delivered to the commissioners."

Approved March 11, 1974

## CHAPTER NO. 101

### AN ACT AMENDING SECTION 84-1508.2, R.C.M. 1947, TO AUTOMATICALLY EXTEND THE STATUTE OF LIMITATIONS ON MONTANA CORPORATION TAX RETURNS WHEN A WRITTEN AGREEMENT IS MADE EXTENDING THE FEDERAL STATUTE OF LIMITATIONS, AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 84-1508.2, R.C.M. 1947, is amended to read as follows:

"84-1508.2. **Periods of limitation — limitations for notification of additional tax extended if taxpayer fails to report change in federal tax — waiver.** (1) Except as otherwise provided in this section and in

section 84-1513, R.C.M. 1947, no deficiency shall be assessed or collected with respect to the year for which a return is filed unless the notice of additional tax proposed to be assessed is mailed within five (5) years from the date the return was filed. For the purposes of this section a return filed before the last day prescribed for filing shall be considered as filed on such last day. Where before the expiration of the period prescribed for assessment of the tax, the taxpayer consents in writing to an assessment after the time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The limitations prescribed for giving notice of a proposed assessment of additional tax shall not apply *when*

*(a) the taxpayer has by written agreement suspended the federal statute of limitations for collection of federal tax, provided the suspension of the limitation set forth in this section shall last only so long as*

*(i) the suspension of the federal statute of limitation, or*

*(ii) until one (1) year after any federal changes have become final or any amended federal return is filed as a result of such suspension of the federal statute, whichever is the latest in time, or*

*(b) when a taxpayer has failed to file a report of changes in federal taxable income or an amended return as required by section 84-1517, R.C.M. 1947, until five (5) years after the federal changes become final or the amended federal return was filed, whichever the case may be.*

(2) No refund or credit shall be allowed or paid with respect to the year for which a return is filed after five (5) years from the last day prescribed for filing the return or after one (1) year from the date of the overpayment, whichever period expires the later, unless before the expiration of such period the taxpayer files a claim therefor or the state department of revenue has determined the existence of the overpayment and has approved the refund or credit thereof. If the taxpayer has agreed in writing under the provisions of subsection (1) of this section to extend the time within which the state department of revenue may propose an additional assessment, the period within which a claim for refund or credit may be filed, or a credit or refund allowed in the event no claim is filed, shall automatically be so extended."

Section 2. This act is effective on its passage and approval.

Approved March 11, 1974

## CHAPTER NO. 102

AN ACT TO ALLOCATE STATE CONSTRUCTION FUNDS TO MATCH  
FEDERAL-AID HIGHWAY FUNDS AVAILABLE FOR THE RE-  
PLACEMENT OF BRIDGES, AND PROVIDING FOR THE APPOR-  
TIONMENT OF SUCH STATE CONSTRUCTION FUNDS.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is a new section to be numbered 32-2614, R.C.M. 1947, which reads as follows:

**32-2614. Replacement of bridges.** Whenever funds are made available under the Federal-Aid Highway Act for the replacement of bridges, the department may:

(1) Allocate from state construction moneys such moneys as are necessary to match the available federal funds. Such allocation shall be made from available state construction moneys before the apportionments provided for in sections 32-2606, 32-2607 and 32-2611.

(2) Whenever such state construction moneys are so allocated, the amount so allocated shall be deducted from future apportionments to the financial district or city as follows:

(a) if the moneys are allocated for the replacement of a bridge located on the primary or urban system, the amount shall be deducted over a period of five (5) years; and

(b) if the moneys are allocated for the replacement of a bridge located on the secondary system, the amount shall be deducted over a period of ten (10) years.

Approved March 11, 1974

## CHAPTER NO. 103

### AN ACT RECOGNIZING THE RIGHT TO TURN WATER INTO NATURAL CHANNELS, ADDING A NEW SECTION TO THE WATER USE ACT.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is a new section to be numbered 89-891.1, R.C.M. 1947, which reads as follows:

**89-891.1. Water turned into natural channels.** Water appropriated under an existing right or pursuant to this act may be turned into the natural channel of another stream, or from a reservoir into the natural channel, and withdrawn or diverted at a point downstream for beneficial use, but the waters of that stream may not thereby be diminished in quantity or deteriorated in quality to the detriment of a prior appropriator. Water stored in a reservoir under an existing right or pursuant to this act which is turned into a natural channel for withdrawal or diversion and beneficial use downstream shall not be considered a part of the natural flow of that stream.

Approved March 11, 1974

## CHAPTER NO. 104

### AN ACT ELIMINATING LIMITS ON THE AMOUNT FOR WHICH ANY

INDIVIDUAL MAY BE INSURED IN GROUP LIFE INSURANCE POLICIES; AND REPEALING SECTION 40-3908, R.C.M. 1947.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 40-3908, R.C.M. 1947, is repealed.

Approved March 11, 1974

## CHAPTER NO. 105

AN ACT TO ALLOCATE STATE CONSTRUCTION FUNDS TO MATCH FEDERAL-AID HIGHWAY FUNDS AVAILABLE FOR ECONOMIC GROWTH CENTERS; AND PROVIDING FOR THE APPORTIONMENT OF SUCH STATE CONSTRUCTION FUNDS.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is a new section to be numbered 32-2620, R.C.M. 1947, which reads as follows:

32-2620. **Economic growth center defined.** For the purposes of this section an "economic growth center" is defined as an area of population of less than one hundred thousand (100,000) which has been recommended for designation as such by the governor of Montana and approved by the secretary of transportation of the United States.

Section 2. There is a new section to be numbered 32-2621, R.C.M. 1947, which reads as follows:

32-2621. **Department of highways shall determine centers.** For the purposes of this section the department of highways is authorized to determine and delineate the area influenced by designated economic growth centers. In so doing it shall take into account relevant geographic, economic, educational and recreational factors. The department is also authorized to determine and delineate those portions of existing highways which need to be upgraded to accommodate the existing and future needs of the traveling public.

Section 3. There is a new section to be numbered 32-2622, R.C.M. 1947, which reads as follows:

32-2622. **Allocation of funds.** Annually, beginning July 1, 1974, and at the beginning of each fiscal year thereafter, the department shall allocate available state construction funds to match federal-aid highway funds made available for economic growth center development highways. Such allocation shall be made from available state construction moneys before the apportionments provided in sections 32-2606, 32-2607 and 32-2611, R.C.M. 1947.

Section 4. There is a new section to be numbered 32-2623, R.C.M. 1947, which reads as follows:

32-2623. **Apportionment of funds.** The department shall at the beginning of each fiscal year apportion state construction funds among the approved economic growth centers as follows:

(1) The allocation for the 1974 fiscal year shall be the ratio of the number of miles of highways that need upgrading in existence on July 1, 1973, on the primary and urban systems in each approved growth center's area of influence to the total number of miles in all approved growth centers' area of influence that need upgrading.

(2) Thereafter, the allocation shall be in the ratio of the number of miles in existence on July 1 of a fiscal year on the primary, secondary and urban systems in each approved growth center's area of influence that need upgrading to the total number of miles in all approved growth centers' area of influence that need upgrading.

(3) To the extent necessary to permit orderly programming and construction of projects, expenditures in any approved growth center may exceed the amount apportioned to the growth center. The amount of any such excess expenditures shall be deducted from future apportionments to that growth center.

Approved March 11, 1974

## CHAPTER NO. 106

AN ACT TO ALLOCATE STATE CONSTRUCTION FUNDS TO MATCH FEDERAL-AID HIGHWAY FUNDS AVAILABLE FOR PRIORITY PRIMARY ROUTES; AND PROVIDING FOR THE APPORTIONMENT OF SUCH STATE CONSTRUCTION FUNDS.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is a new section to be numbered 32-2615, R.C.M. 1947, which reads as follows:

32-2615. **Definition.** For the purposes of this section "priority primary routes" are defined as those high traffic sections of highways on the federal-aid primary system which connect to the interstate system.

Section 2. There is a new section to be numbered 32-2616, R.C.M. 1947, which reads as follows:

32-2616. **Selection of routes.** Such routes shall be selected by the department, in consultation with appropriate local officials, subject to the approval of the secretary of transportation for priority of improvement to supplement the service provided by the interstate system by furnishing needed adequate traffic collection and distribution facilities.

Section 3. There is a new section to be numbered 32-2617, R.C.M. 1947, which reads as follows:



32-2617. **Allocation of funds.** Annually, beginning July 1, 1974, and at the beginning of each fiscal year thereafter, the department shall allocate available state construction funds for matching federal-aid priority primary route funds. Such allocation shall be made from available state construction moneys before the apportionments provided for in sections 32-2606, 32-2607 and 32-2611, R.C.M. 1947.

Section 4. There is a new section to be numbered 32-2618, R.C.M. 1947, which reads as follows:

32-2618. **Apportionment of funds.** The department shall at the beginning of each fiscal year apportion available state construction funds among the approved priority primary routes. This apportionment shall be based on the ratio between the estimated cost of constructing or reconstructing each selected route and the estimated cost of constructing or reconstructing all then approved priority primary routes.

Section 5. There is a new section to be numbered 32-2619, R.C.M. 1947, which reads as follows:

32-2619. **Excess expenditures.** To the extent necessary to permit orderly programming and construction of projects, expenditures on any route may exceed the amount apportioned to that route. The amount of any such excess expenditures shall be deducted from future apportionments to that route.

Approved March 11, 1974

## CHAPTER NO. 107

### AN ACT TO AMEND SECTION 69-4103, R.C.M. 1947, RELATING TO THE QUALIFICATIONS OF MEMBERS OF THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 69-4103, R.C.M. 1947, is amended to read as follows:

"69-4103. **State board of health — members — appointment — qualifications — terms.** (1) The state board consists of seven (7) members appointed by the governor for terms of seven (7) years with the consent of the senate. An appointment to replace a member whose term has expired shall be for seven (7) years. An appointment to replace a member whose term has not expired shall be for the remainder of the term.

(2) Membership of the state board shall include:

(a) *two (2) persons who have the degree of doctor of medicine or doctor of dental surgery;*

(b) *five (5) persons who have demonstrated intelligent and active*

interest in the field of public health who do not hold the degree of doctor of medicine or doctor of dental surgery.

(3) Terms of members holding office when this act becomes effective shall not be affected."

Approved March 11, 1974

## CHAPTER NO. 108

AN ACT CHANGING THE TIME LIMITS FOR LISTING INITIATIVE AND REFERENDUM MEASURES ON THE BALLOT AND FOR PRINTING AND DISTRIBUTING PAMPHLET COPIES OF SUCH MEASURES, AND AMENDING SECTIONS 37-104.1, 37-105, AND 37-107, R.C.M. 1947.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 37-104.1, R.C.M. 1947, is amended to read as follows:

"37-104.1. **Attorney general's summary of referred or initiative measures — statement by secretary of state for referendum measures — placement on ballot.** The secretary of state of the state of Montana prior to certifying and numbering of referendum, initiative or constitutional amendment to the several counties of Montana as provided by sections 37-105 and 23-1102 [23-3506] of the Revised Codes of Montana, 1947, shall transmit a copy of the measure to be voted upon to the attorney general of Montana. Within ten (10) days after the measure is filed with him, the attorney general shall provide and return to the secretary of state a statement in ordinary plain language explaining in not more than one hundred (100) words the general purpose of the measure submitted. In the case of referendum measures, the secretary of state shall prepare a statement setting forth the vote by which the referendum passed each house of the legislative assembly. The statement by the secretary of state shall precede the attorney general's statement on the printed form. The statement as prepared by the attorney general, and the statement of the secretary of state for referendum measures only, shall be in addition to the legislative title of the measure, the statement of the secretary of state for referendum measures only and the statement of the attorney general shall precede the other title of the measure. In providing the statement, the attorney general shall give a true and impartial statement of the purpose of the measure in plain, easily understood language and in such manner as shall not be an argument or likely to create prejudice either for or against the measure."

Section 2. Section 37-105, R.C.M. 1947, is amended to read as follows:

"37-105. **Certification and numbering of measures — constitutional amendments.** The secretary of state shall furnish the said county clerks his certified copy of the titles and numbers of the various measures

to be voted upon at the ensuing general or special election, and he shall use for each measure a title designated for that purpose by the legislative assembly, committee, or organization presenting and filing with him the act, or petition for the initiative or the referendum, or in the petition or act; provided, that such title shall in no case exceed one hundred words, and shall not resemble any such title previously filed for any measure to be submitted at that election which shall be descriptive of said measure, and he shall number such measures. All measures shall be numbered with consecutive numbers beginning with the number immediately following that on the last measure filed in the office of the secretary of state. The affirmative and negative of each measure shall bear the same number, and no two measures shall be numbered alike. It shall be the duty of the several county clerks to print said titles and numbers on the official ballot prescribed by section 23-3506, in the numerical order in which the measures have been certified to them by the secretary of state. Measures proposed by the initiative shall be designated and distinguished from measures proposed by the legislative assembly by the heading "proposed petition for initiative."

All constitutional amendments submitted to the qualified electors of the state shall likewise be placed upon the official ballot prescribed by said section 23-3506 and no such amendment shall hereafter be submitted on a separate ballot. Nothing herein contained shall be deemed to change the existing laws of the state regulating in other respects the manner of submitting such proposed amendments."

Section 3. Section 37-107, R.C.M. 1947, is amended to read as follows:

"37-107. **Printing and distribution of measures.** The secretary of state shall furnish a copy of each of the proposed measures to be submitted to the people and make requisition on the state purchasing agent for the printing and delivery to him of all proposed constitutional amendments, initiative and referendum measures to be submitted to a vote of the people.

The *department of administration* shall, no later than five (5) weeks before any general or special election, at which any proposed law is to be submitted to the people, cause to be printed a true copy of the title and text of each measure to be submitted, with the number and form in which the question will be printed on the official ballot. It shall be the duty of the *department of administration* to call for bids and contract with the lowest responsible bidder for the printing of the proposed law to be submitted to the people.

The proposed law to be submitted shall be printed in news type, each page to be six inches wide by nine inches long, and when such proposed measure constitutes less than six pages, it shall be printed flat and forwarded to the county clerk and recorder of each of the several counties in that form.

When the proposed measure constitutes more than six pages, said measure shall be printed in pamphlet form, securely stapled, without cover. No proposed measure, hereafter, to be submitted to the people of the state, as provided for in this section shall be bound. The quality of the paper

to be used for the proposed measure shall be left to the discretion of the *department of administration*. The number of said proposed measures to be printed shall be at least five per cent (5%) more than the number of qualified electors, as shown by the registration lists of the several counties of the state at the last preceding statewide election.

The secretary of state shall distribute to each county clerk *no later than four (4) weeks before* the election at which the proposed measure(s) will be voted upon, a sufficient number of said pamphlets to furnish one copy to every voter in his county. And each county clerk shall be required to mail to each registered voter in each of the several counties in the state at least one copy of the same within *two (2) weeks* from the date of his receipt of the same from the secretary of state. The mailing of said pamphlets to electors shall be a part of the official duty of the county clerk of each of the several counties, and his official compensation shall be full compensation for this additional service."

Approved March 11, 1974

## CHAPTER NO. 109

AN ACT TO AMEND SECTIONS 75-6404 AND 75-5912, R.C.M. 1947, TO CHANGE THE REGULAR SCHOOL ELECTION DAY FROM THE FIRST SATURDAY IN APRIL OF EACH YEAR TO THE FIRST TUESDAY OF APRIL OF EACH YEAR; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 75-6404, R.C.M. 1947, is amended to read as follows:

"75-6404. **Regular school election day and special school elections.** The first *Tuesday* of April of each year shall be the regular school election day. Unless otherwise provided by law, special school elections may be conducted at such times as determined by the trustees."

Section 2. Section 75-5912, R.C.M. 1947, is amended to read as follows:

"75-5912. **Annual election.** In each district an election of trustees shall be conducted annually on the regular school election day, the first *Tuesday* of April. Election of trustees shall comply with the election provisions of this Title."

Section 3. This act shall become effective on January 1, 1975.

Approved March 11, 1974

## CHAPTER NO. 110

AN ACT AMENDING 67-2124, R.C.M. 1947, RELATING TO THE BOND

REQUIRED TO REGISTER A FOREIGN SUBDIVISION FOR SALE  
IN MONTANA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 67-2124, R.C.M. 1947, is amended to read as follows:

"67-2124. **Notice of filing and registration.** (a) Upon receipt of the application for registration in proper form, the agency shall issue a notice of filing to the applicant. Within ninety (90) days from the date of the notice of filing, the agency shall enter an order registering the subdivided lands or rejecting the registration. If no order of rejection is entered within ninety (90) days from the date of notice of filing, the land shall be deemed registered unless the applicant has consented in writing to a delay.

(b) If the agency affirmatively determines, upon inquiry and examination, that the requirements of section 67-2123 have been met, it shall enter an order registering the subdivided lands and shall designate the form of the public offering statement.

(c) If the agency determines upon inquiry and examination that any of the requirements of section 67-2123 has not been met, it shall notify the applicant that the application for registration must be corrected in the particulars specified within ten (10) days. If the requirements are not met within the time allowed the agency shall enter an order rejecting the registration, which shall include the findings of fact upon which the order is based. The order rejecting the registration shall not become effective for twenty (20) days, during which time the applicant may petition for reconsideration and is entitled to a hearing.

(d) *No subdivided lands shall be registered or deemed registered until the subdivider shall have filed a bond with the agency, executed by a surety company authorized to do business in this state, on a form approved by the agency, and in such amount as the commission shall deem necessary to protect purchasers from damages arising out of violation of any provision of the Revised Codes of Montana, 1947, or any rule or regulation promulgated in furtherance thereof, when the volume of business of the subdivider and other related factors are taken into consideration, but in no event less than fifty thousand dollars (\$50,000)."*

Section 2. This act is effective on its passage and approval.

Approved March 11, 1974

## CHAPTER NO. 111

AN ACT TO EMPOWER THE BOARD OF LAND COMMISSIONERS TO  
LEASE GEOTHERMAL RESOURCES ON STATE LANDS.

*Be it enacted by the Legislature of the State of Montana: .*

Section 1. There is a new section to be numbered 81-2601, R.C.M. 1947, which reads as follows:

81-2601. **Empowering the state board of land commissioners to lease.** The board of land commissioners may lease state-owned lands, including the beds of navigable streams and the beds of navigable bodies of water, to persons, associations, or corporations for prospecting, exploration, well construction, and the production of geothermal resources.

Section 2. There is a new section to be numbered 81-2602, R.C.M. 1947, which reads as follows:

81-2602. **Definitions.** Unless the context requires otherwise in this act:

(1) "Geothermal resources" means the natural heat energy of the earth, including the energy, in whatever form, which may be found in any position and at any depth below the surface of the earth, either present in, resulting from, created by, or which may be extracted from, such natural heat, and all minerals in solution or other products obtained from the material medium of any geothermal resource. Geothermal resources are sui generis, being neither a mineral resource nor a water resource, but they are closely related to and possibly affecting and affected by water resources in many instances. No right to seek, obtain, or use geothermal resources has passed or shall pass with any existing or future lease of state or school lands.

(2) "Board" means the board of land commissioners.

(3) "Department" means the department of state lands provided for in Title 82A, chapter 11.

(4) "Geothermal development" means any of the operations or facilities necessary for the production of geothermal resources.

Section 3. There is a new section to be numbered 81-2603, R.C.M. 1947, which reads as follows:

81-2603. **Rules and regulations.** The board of land commissioners shall adopt rules governing the issuance of geothermal resource leases and the conduct of all geothermal operations. The board may also require the applicant for a geothermal lease to pay an application fee.

Section 4. There is a new section to be numbered 81-2604, R.C.M. 1947, which reads as follows:

81-2604. **Provisions of the lease.** (1) A lease issued by the board gives the lessee, so long as he complies with the terms and conditions of the lease, the exclusive right of possession of the lands or interests leased, subject to conditions contained in the lease.

(2) In every geothermal resource lease granted there is reserved to this state the right to sell, lease or otherwise dispose of the surface of the lands covered thereby subject to the rights and privileges granted the lessee under the terms of the lease.

(3) The term of each lease shall be for a primary term of ten (10) years and for so long thereafter as geothermal resources in paying quantities are produced, provided that all conditions and terms of the lease are fully performed by the lessee.

If geothermal resources are not being produced from the leased premises at the expiration of the primary term of the lease, but the owner of the lease is then engaged in drilling on the premises for geothermal resources, then the lease term shall be extended for so long as the drilling operations are diligently continued. If geothermal resources are recovered from any well drilled after the expiration of the primary term, the lease shall continue in force so long as geothermal resources in paying quantities are produced from the leased premises.

(4) Lessees may enter into agreements with other persons, associations, firms and corporations for drilling and other operations on state lands, but no such operating agreements shall be binding upon the state until filed with the department and approved by the board. No drilling or operating agreement may affect the obligations of each individual leaseholder to the state.

(5) Nothing contained in this act or other related acts shall prevent the board of land commissioners from entering into agreements for the pooling of acreage for unit operations for the production of geothermal resources and apportionment of geothermal royalties on an acreage or other equitable basis, or from modifying the royalty provisions of existing leases and all subsequent leases in accordance with pooling agreements and unit plans of operation. No agreement may be entered into which changes the the percentage of royalties to be paid to the state from the percentages fixed in its leases.

(6) Geothermal resources produced from any part of a unit in which state lands are included by virtue of a pooling agreement shall be considered to be produced from the state lands therein.

(7) Every lease shall specify the rental and royalty to be paid, reasonable forfeiture provisions, and reasonable terms under which the lessee may, within a specified time, remove property placed on the leased lands upon the termination of the lease by forfeiture or by lapse of time. Furthermore, the lease may contain other provisions the board and the lessee agree upon, provided that the additional terms are not inconsistent with this chapter. The board may exercise business discretion in entering into leases under this chapter.

Section 5. There is a new section to be numbered 81-2605, R.C.M. 1947, which reads as follows:

81-2605. **Royalties and rentals.** Geothermal leases shall be issued at an annual rental of not less than one dollar (\$1) per acre, payable in advance and/or a royalty which shall not be less than ten percent (10%) of the amount or value of steam, or other forms of heat or energy, derived from the production under the lease and sold or utilized by the lessee or reasonably susceptible to sale or utilization by the lessee and not more than five percent (5%) of any by-product derived from production under the lease and sold or utilized or reasonably susceptible of sale or utilization by the lessee.

Section 6. There is a new section to be numbered 81-2606, R.C.M. 1947, which reads as follows:

81-2606. **Bonds to the state.** The board may, at any time prior to the execution and delivery of a geothermal lease, or at any time during the life of the lease, require a lessee to file with the department a bond to protect the rights of the state. The bonds shall be in form and amount prescribed by the board. The board may at any time require new or additional bonds if the interests of the state will not adequately be protected by the bond previously filed.

Section 7. There is a new section to be numbered 81-2607, R.C.M. 1947, which reads as follows:

81-2607. **Compensation to surface lessee.** The lessee of any geothermal lease shall compensate the surface lessee for any damage to the surface or leasehold interest caused as a result of the geothermal lease. The board may require the geothermal lessee to post a bond, in an amount to be set by the board, to insure the payment of damages to any surface lessee. If the surface lessee and the geothermal lessee disagree as to the reasonable amount of surface damage, damage shall be ascertained in the same manner as prescribed in section 81-2609.

Section 8. There is a new section to be numbered 81-2608, R.C.M. 1947, which reads as follows:

81-2608. **Compensation for improvements.** A geothermal lessee of state lands has the right to place upon the leased lands a reasonable amount of improvements, provided that such improvements are directly related to the purpose of the lease. Whenever another person becomes the geothermal lessee, he shall pay the former lessee the reasonable value of such improvements at the time the new lessee takes possession thereof.

In determining the value of these improvements the original cost, the present condition, and the suitability of the improvements for the uses ordinarily made of geothermal resources shall be considered.

The former lessee may, however, remove or dispose of the moveable improvements from the land within sixty (60) days from the expiration of his lease except for casing the well and other equipment necessary for the preservation of any geothermal well. If not removed within sixty (60) days, improvements shall become the property of the state unless the board shall grant additional time for the removal thereof. Before a lease is issued to the new lessee he shall show that he has paid the former lessee the value of the improvements as agreed upon by them or as fixed and determined under section 81-2609, or that he has offered to pay the value of the improvements as so fixed and determined, or that the former lessee elects to remove the improvements.

Section 9. There is a new section to be numbered 81-2609, R.C.M. 1947, which reads as follows:

81-2609. **Arbitrators to fix value of improvements — appeal.** If the owner of any improvements on state lands of the type authorized by law at the time they were placed thereon desires to sell these improvements to the new lessee, and they are unable to agree on the value thereof,



the value shall be ascertained and fixed by three (3) arbitrators, one (1) of whom shall be appointed by the owner of the improvements, one (1) by the new lessee and the third by the two (2) arbitrators so appointed. The reasonable compensation that the arbitrators may fix shall be paid in equal shares by the owner of the improvements and the new lessee. The value of the improvements so ascertained and fixed is binding on both parties. If either party is dissatisfied with the valuation so fixed, he may within ten (10) days appeal from their decision to the department which shall examine the improvements and make the final decision as to the value of the improvements. The department shall apportion the actual cost of the re-examination to the owner and the new lessee as justice may require. The value of the improvements shall be ascertained and fixed as provided in section 81-2608 of this chapter.

Section 10. There is a new section to be numbered 81-2610, R.C.M. 1947, which reads as follows:

**81-2610. Disposition of royalties and other receipts.** The department shall credit fees collected under geothermal leases to the general fund; all rentals, penalties and bonuses shall be credited to the income fund of the grant to which the lands under each lease belong; all moneys collected as royalties shall be credited to the permanent fund arising from the grant to which the land under each particular lease belongs.

Section 11. There is a new section to be numbered 81-2611, R.C.M. 1947, which reads as follows:

**81-2611. Application for water right — issuance of right.** If any geothermal development located on state land requires the utilization of water, the lessee may at any time prior to one (1) year before the expiration of his lease, make application to the board of land commissioners for permission to secure a water right to the land under his lease. Such application shall be in writing, show the permanency of the water supply, and the estimated cost of utilizing such water resources. If the proposed plan meets with the approval of the board, permission shall be granted to the lessee to secure the desired water right for the land. Such right shall be secured in accordance with Title 89, chapter 8, R.C.M. 1947, and shall be filed in the name of the state of Montana. Existing water rights purchased by the geothermal lessee shall be the property of the lessee.

Section 12. There is a new section to be numbered 81-2612, R.C.M. 1947, which reads as follows:

**81-2612. Conflicting leases.** Where there are conflicting leases, including but not limited to geothermal, coal, mineral and oil and gas leases, embracing the same land, the person who first was issued a lease shall be entitled to priority of rights, provided however that the exercise of this priority shall not interfere with actual production from the lease as determined by the board.

Section 13. There is a new section to be numbered 81-2613, R.C.M. 1947, which reads as follows:

**81-2613. Severability clause.** If any section, clause, paragraph, or provision of this act shall be found invalid by a court of competent juris-

diction, it shall be conclusively presumed that this act would have passed by the legislature without such invalid section, paragraph or clause and the act as a whole shall not be declared invalid by reason of the fact that one (1) or more sections, clauses, sentences, paragraphs, or parts may have been found invalid by any court.

Approved March 11, 1974

## CHAPTER NO. 112

### AN ACT TO AMEND SECTION 50-704, R.C.M. 1947, TO PROVIDE THAT POINT OR POINTS OF WORK MAY BE PERFORMED UPON A PATENTED CLAIM.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 50-704, R.C.M. 1947, is amended to read as follows:

**"50-704. Recording of affidavit of performance of annual work.** The owner of a lode or placer claim who performs or causes to be performed the annual work, or makes the improvements required by the laws of the United States, as permitted and defined by laws of the United States, in order to prevent the forfeiture of the claim, must, within ninety (90) days after the expiration of the federal annual assessment work period, file in the office of the county clerk of the county in which such claim or claims is situated an affidavit of his own, or an affidavit of the person who performed such work or made the improvements, showing:

1. The name of the mining claim or claims;
2. The location of the claim or claims by section, township, and range (by projected survey lines if located in unsurveyed country);
3. The book and page numbers wherein the original or latest amended relocation for each claim is recorded;
4. The number of days' work done, and the character and value of the improvements placed thereon, or the verified report required by United States mining law if geological, geophysical, or geochemical work or labor is being relied upon;
5. The dates between which such work or improvements were effected;
6. At whose instance the work was done or the improvements made;
7. The actual amount paid for work and improvements, and by whom paid when the same was not done by the owner.

Annual assessment work may be performed or caused to be performed at one (1) or more points within a group of contiguous claims and may be utilized to satisfy annual assessment work requirements upon the group of contiguous claims. *Said point or points of work may be performed upon a patented claim.* If annual assessment work is performed or caused

to be performed at one (1) or more points within a group of contiguous claims, the affidavit of performance of assessment work must be filed for the group of claims. The affidavit, in addition to requirements established by this section for affidavits of performance of assessment work, must contain a description and location of the work done upon the group at a point or points within the group, the specific names of all the claims in the group for whose benefit the work was performed, and the total cost of the work performed.

If group work is claimed for a group of claims crossing county lines, the affidavit required by this section shall be filed for recording within the required time in each of the counties in which such claims are located.

An affidavit of performance of annual assessment work must be verified, before some officer authorized to administer oaths, by the locator, or one of the locators if there be more than one, or by authorized agent. In the case of a corporation, the verification may be made by any officer thereof, or by an authorized agent. When the verification is made by an agent, the fact of the agency shall be stated in the affidavit. Such affidavits, or a certified copy thereof, are prima facie evidence of the facts therein stated. The failure to file such affidavits within the period allowed therefor shall be prima facie evidence that such labor has not been performed and that the owner of the claim or claims has abandoned and surrendered same."

Approved March 11, 1974

## CHAPTER NO. 113

### AN ACT TO REDUCE THE AMOUNT OF GOOD TIME ALLOWANCE FOR HABITUAL OFFENDERS; AND AMENDING SECTION 80-1905, R.C.M. 1947.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 80-1905, R.C.M. 1947, is amended to read as follows:

**"80-1905. Good time allowance — forfeiture — probationers and parolees — application of prior law — good time allowance offenders.** (1) The state department of institutions shall adopt rules and regulations providing for the granting of good time allowance for inmates employed in any prison work or activity. The good time allowance shall operate as a credit on his sentence as imposed by the court, conditioned upon the inmate's good behavior and compliance with the rules and regulations made by the department or the warden. *Except as provided in subsection (4), the rules adopted by the department may not grant good time allowance to exceed:*

(a) ten (10) days per month for inmates assigned within the confines of the walls of the prison;

(b) thirteen (13) days per month for those inmates placed outside the confines of the walls of the prison;

(c) fifteen (15) days per month for those inmates who have been assigned outside the walls of the prison for an uninterrupted period of one year on a minimum status.

(d) thirteen (13) days per month for those inmates enrolled in school inside the walls who successfully complete the course of study or who while so enrolled are released from prison by discharge or parole.

(e) ten (10) days for each pint of blood donated by an inmate.

(2) In the event of an attempted escape by an inmate, or a violation of the rules and regulations prescribed by the department or warden, the inmate may be punished by the forfeiture of part or all good time allowances. The warden of the state prison shall advise the department of institutions of any attempted escape or violation of rules and regulations on the part of the inmate. Any punishment by forfeiture of good time allowance must be approved by the department.

(3) *The provisions of subsections (1) and (2) apply to all persons who are on probation or parole or eligible to be placed on probation or parole. No person convicted and sentenced before April 1, 1955, shall have his good time allowance reduced as a result of this section.*

(4) *The maximum allowances for good time described in subsection (1) shall be reduced for a person who has been convicted of a felony offense on more than two (2) occasions within a ten (10) year period; provided, however, for the purpose of determining such ten (10) year period, the time during which a person is incarcerated shall not be counted. The maximum amount of good time allowable for such a habitual offender shall be computed as follows:*

*(a) five (5) days per month for inmates assigned within the confines of the walls of the prison;*

*(b) eight (8) days per month for those inmates placed outside the confines of the walls of the prison;*

*(c) ten (10) days per month for those inmates who have been assigned outside the walls of the prison for an uninterrupted period of one (1) year on a minimum status;*

*(d) eight (8) days per month for those inmates enrolled in school inside the walls who successfully complete the course of study or who while so enrolled are released from prison by discharge or parole;*

*(e) five (5) days for each pint of blood donated by an inmate.*

*(5) No person convicted and sentenced before July 1, 1974, shall have his good time allowance reduced as required by subsection (4)."*

Approved March 11, 1974

## CHAPTER NO. 114

AN ACT AMENDING SECTIONS 27-702, AND 27-703, R.C.M. 1947,

PROVIDING FOR A DEFINITION OF HONEY AND RESTRICTING  
THE USE OF THE WORD HONEY IN FOOD LABELING AND  
ADVERTISING.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 27-702, R.C.M. 1947, is amended to read as follows:

"27-702. **Definition of terms.** For the purpose of this act—

- (a) The term "state board" means the Montana state board of health.
- (b) The term "department" means the Montana state department of health.
- (c) The term "person" includes individual, partnership, corporation and association.
- (d) The term "food" means
  - (1) articles used for food or drink for man or other animals,
  - (2) chewing gum, and
  - (3) articles used for components of any such article.
- (e) The term "drug" means
  - (1) articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; and
  - (2) articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals; and
  - (3) articles (other than food) intended to affect the structure or any function of the body of man or other animals; and
  - (4) articles intended for use as a component of any article specified in clause (1), (2) or (3); but does not include devices or their components, parts or accessories.
- (f) The term "device" (except when used in paragraph (1) of this section and in sections 27-703 (j), 27-711 (f), 27-715 (c) and (o) and 27-719 (c)) means instruments, apparatus and contrivances, including their components, parts and accessories, intended
  - (1) for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals; or
  - (2) to affect the structure or any function of the body of man or other animals.
- (g) The term "cosmetic" means
  - (1) articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness or altering the appearance, and

(2) articles intended for use as a component of any such articles, except that such term shall not include soap.

(h) The term "official compendium" means the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, official National Formulary, or any supplement to any of them.

(i) The term "label" means a display of written, printed or graphic matter upon the immediate container of any article; and a requirement made by or under authority of this act that any word, statement or other information appearing on the label shall not be considered to be complied with unless such word, statement or other information also appears on the outside container or wrapper, if any there be, of the retail package of such article, or is easily legible through the outside container or wrapper.

(j) The term "immediate container" does not include package liners.

(k) The term "labeling" means all labels and other written, printed or graphic matter

(1) upon an article or any of its containers or wrappers, or

(2) accompanying such article.

(l) If an article is alleged to be misbranded because the labeling is misleading, or if an advertisement is alleged to be false because it is misleading, then in determining whether the labeling or advertisement is misleading, there shall be taken into account (among other things) not only representations made or suggested by statement, word, design, device, sound or in any combination thereof, but also the extent to which the labeling or advertisement fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement thereof or under such conditions of use as are customary or usual.

(m) The term "advertisement" means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of food, drugs, devices or cosmetics.

(n) The representation of a drug, in its labeling or advertisement, as an antiseptic shall be considered to be a representation that it is a germicide, except in the case of a drug purporting to be, or represented as, an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder, or such other use as involves prolonged contact with the body.

(o) The term "new drug" means

(1) any drug the composition of which is such that such drug is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs, as safe and effective for use under the conditions prescribed, recommended or suggested in the labeling thereof; or

(2) any drug the composition of which is such that such drug, as a result of investigations to determine its safety and effectiveness for use under such conditions, has become so recognized, but which has not, otherwise than in such investigations, been used to a material extent or for a material time under such conditions.

(p) The term "contaminated with filth" applies to any food, drug, device or cosmetic not securely protected from dust, dirt, and as far as may be necessary by all reasonable means, from all foreign or injurious contaminations.

(q) The provisions of this act regarding the selling of food, drugs, devices or cosmetics, shall be considered to include the manufacture, production, processing, packing, exposure, offer, possession and holding of any such article for sale; and the sale, dispensing and giving of any such article, and the supplying or applying of any such articles in the conduct of any food, drug or cosmetic establishment.

(r) The term "pesticide chemical" means any substance which, alone, in chemical combination, or in formulation with one or more other substances is an "economic poison" within the meaning of the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C., secs. 135-135k as now enacted or as hereafter amended), and which is used in the production, storage or transportation of raw agricultural commodities.

(s) The term "raw agricultural commodity" means any food in its raw or natural state, including all fruits that are washed, colored or otherwise treated in their unpeeled natural form prior to marketing.

(t) The term "food additive" means any substance, the intended use of which results or may be reasonably expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food (including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting or holding food; and including any source of radiation intended for any such use), if such substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures (or, in the case of a substance used in a food prior to January 1, 1958, through either scientific procedures or experience based on common use in food) to be safe under the conditions of its intended use; except that such term does not include:

(1) a pesticide chemical in or on a raw agricultural commodity; or

(2) a pesticide chemical to the extent that it is intended for use or is used in the production, storage or transportation of any raw agricultural commodity; or

(3) a color additive; or

(4) any substance used in accordance with a sanction or approval granted prior to the enactment of the Food Additives Amendment of 1958, pursuant to the Federal Act; the Poultry Products Inspection Act (21 U.S.C. 451 and the following) or the Meat Inspection Act of March 4, 1907 (34 Stat. 1260), as amended and extended (21 U.S.C. 71 and the following).

(u) (Color and color additive)

(1) The term "color additive" means a material which—

(A) is a dye, pigment or other substance made by a process of synthesis or similar artifice, or extracted, isolated or otherwise derived, with or without intermediate or final change of identity from a vegetable, animal, mineral or other source, or

(B) when added or applied to a food, drug or cosmetic, or to the human body or any part thereof, is capable (alone or through reaction with other substance) of imparting color thereto; except that such term does not include any material which has been or hereafter is exempted under the Federal Act.

(2) The term "color" includes black, white and intermediate grays.

(3) Nothing in clause (1) of this subsection (u) shall be construed to apply to any pesticide chemical, soil or plant nutrient, or other agricultural chemical solely because of its effect in aiding, retarding or otherwise affecting, directly or indirectly the growth or other natural physiological process of produce of the soil and thereby affecting its color, whether before or after harvest.

(v) The term "Federal Act" means the Federal Food, Drug and Cosmetic Act, as amended (Title 21 U.S.C. 301 et seq.).

(w) The term "counterfeit drug" means a drug which, or the container or labeling of which, without authorization, bears the trademark, trade name or other identifying mark, imprint, or device, or any likeness thereof, of a drug manufacturer, processor, packer, or distributor other than the person or persons who in fact manufactured, processed, packed or distributed such drug and which thereby falsely purports or is represented to be the product of, or to have been packed or distributed by, such other drug manufacturer, processor, packer, or distributor.

(x) The term "consumer commodity," except as otherwise specifically provided by this subsection, means any food, drug, device, or cosmetic as those terms are defined by this act or by the Federal Act and regulations pursuant thereto. Such term does not include—

(1) any tobacco or tobacco product;

(2) any commodity subject to packaging or labeling requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act or the provisions of the eighth paragraph under the heading "Bureau of Animal Industry" of the Act of March 4, 1913 (37 Stat. 832-833; 21 U.S.C. 151-157), commonly known as the Virus-Serum Toxin Act;

(3) any drug subject to the provisions of section 17 (a) (B) or 16 (k) of this act, or section 503 (b) (1) or 506 of the Federal Act;

(4) any beverage subject to or complying with packaging or labeling requirements imposed under the Federal Alcohol Administration Act (27 U.S.C., et seq.); or

(5) any commodity subject to the provisions of the Federal Seed Act (7 U.S.C. 1551-1610).

(y) The term "principal display panel" means that part of a label that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.



(z) The term "package" means any container or wrapping in which any consumer commodity is enclosed for use in the delivery or display of that consumer commodity to retail purchasers, but does not include—

(1) shipping containers or wrappings used solely for the transportation of any consumer commodity in bulk or in quantity to manufacturers, packers, or processors, or to wholesale or retail distributors thereof;

(2) shipping containers or outer wrappings used by retailers to ship or deliver any commodity to retail customers if such containers and wrappings bear no printed matter pertaining to any particular commodity.

*(A) The term "honey" means the nectar and saccharine exudations of plants, gathered, modified and stored in the comb by honey bees; is levorotatory, contains not more than twenty-five percent (25%) of water, not more than twenty-five hundredths percent (.25%) of ash, and not more than eight percent (8%) sucrose."*

Section 2. Section 27-703, R.C.M. 1947, is amended to read as follows:

"27-703. **Prohibited acts enumerated.** The following acts and the causing thereof within the state of Montana are hereby prohibited:

(a) The manufacture, sale or delivery, holding or offering for sale of any food, drug, device or cosmetic that is adulterated or misbranded.

(b) The adulteration or misbranding of any food, drug, device or cosmetic.

(c) The receipt in commerce of any food, drug, device or cosmetic that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise.

(d) The sale, delivery for sale, holding for sale or offering for sale of any article in violation of section 27-712 or 27-717.

(e) The dissemination of any false advertisement.

(f) The refusal to permit entry or inspection or to permit the taking of a sample, as authorized by section 27-722.

(g) The giving of a guaranty or undertaking which guaranty or undertaking is false, except by a person who relied on a guaranty or undertaking to the same affect (effect) signed by, and containing the name and address of the person residing in the state of Montana from whom he received in good faith the food, drug, device or cosmetic.

(h) The removal or disposal of a detained or embargoed article in violation of section 27-706.

(i) The alteration, mutilation, destruction, obliteration or removal of the whole or any part of the labeling of, or the doing of any other act with respect to a food, drug, device or cosmetic, if such act is done while such article is held for sale and results in such article being adulterated or misbranded.

(j) Forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp, tag, label or other iden-

tification device authorized or required by regulations promulgated under the provisions of this act or of the Federal Act.

(k) The using, on the labeling of any drug or in any advertisement relating to such drug, of any representation or suggestion that an application with respect to such drug is effective under section 27-717, or that such drug complies with the provisions of such section.

(l) In the case of a prescription drug distributed or offered for sale in this state, the failure of the manufacturer, packer or distributor thereof to maintain for transmittal, or to transmit, to any practitioner licensed by applicable law to administer such drug who makes written request for information as to such drug, true and correct copies of all printed matter which is required to be included in any package in which that drug is distributed or sold, or such other printed matter as is approved under the Federal Act. Nothing in this paragraph shall be construed to exempt any person from any labeling requirement imposed by or under other provisions of this act.

(m) (Counterfeiting trade-marks)

(1) Placing or causing to be placed upon any drug or device or container thereof, with intent to defraud, the trade name or other identifying mark, or imprint of another or any likeness of any of the foregoing; or

(2) Selling, dispensing, disposing of or causing to be sold, dispensed or disposed of or concealing or keeping in possession, control or custody, with intent to sell, dispense or dispose of, any drug, device or any container thereof, with knowledge that the trade name or other identifying mark or imprint of another or any likeness of any of the foregoing has been placed thereon in a manner prohibited by subsection (1) hereof; or

(3) Making, selling, disposing of or causing to be made, sold or disposed of or keeping in possession, control or custody, or concealing, with intent to defraud, any punch, die, plate or other thing designed to print, imprint, or reproduce that trade name or other identifying mark or imprint of another or any likeness of any of the foregoing upon any drug, device or container thereof.

(n) Dispensing or causing to be dispensed a different drug or brand of drug in place of the drug or brand of drug ordered or prescribed without the express permission in each case of the person ordering or prescribing.

(o) The using by any person to his own advantage, or revealing, other than to the state board, or officers or employees of the department, or to the courts when relevant in any judicial proceeding under this act, any information acquired under authority of this act concerning any method or process which as a trade secret is entitled to protection.

(p) The distribution in commerce of a consumer commodity, as defined in this act, if such commodity is contained in a package, or if there is affixed to that commodity a label, which does not conform to the provisions of this act and of regulations promulgated under authority of this act; provided, however, that this prohibition shall not apply to persons engaged in business as wholesale or retail distributors of consumer commodities except to the extent that such persons

(1) are engaged in the packaging or labeling of such commodities, or

(2) prescribe or specify by any means the manner in which such commodities are packaged or labeled.

(q) The labeling or packaging of a food, drug, or cosmetic which fails to conform with the requirements of this act.

*(r) It is unlawful for any person to sell or offer for sale any product which is in semblance of honey and which is labeled, advertised, or otherwise represented to be honey, if it is not honey. Any product sold in semblance of honey which is a blend or mixture of honey and other ingredients must be labeled in such a way that the name of the main ingredient added to the honey will be printed so that it will be as prominent and conspicuous as the word honey. The word "imitation" shall not be used in the name of a product which is in semblance of honey whether or not it contains any honey. The label for a product which is not in semblance of honey and which contains honey may include the word "honey" in the name of the product and the relative position of the word "honey" in the product name, and in the list of ingredients, when required, shall be determined by its prominence as an ingredient in the product."*

Approved March 11, 1974

## CHAPTER NO. 115

AN ACT TO AMEND SECTION 70-806, R.C.M. 1947, TO PERMIT THE BOARD OF NATURAL RESOURCES AND CONSERVATION TO WAIVE THE FILING OF AN APPLICATION WHERE UTILITIES ARE BEING RELOCATED PURSUANT TO SECTIONS 32-2414 THROUGH 32-2416, R.C.M. 1947.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 70-806, R.C.M. 1947, is amended to read as follows:

**"70-806. Application for certification — filing and contents — fees — use of filing fees — proof of service on municipalities — waiver of time requirement.** (1) At least two (2) years prior to anticipated commencement of construction of a utility facility as defined in sections 3 (3) (a) [70-803 (3) (a)], 3 (3) (b) (iv) [70-803 (3) (b) (iv)], and 3 (c) [70-803 (c)] and at least nine (9) months prior to the anticipated commencement date of the construction of a utility facility as defined in section 3 (3) (b) (iii) [70-803 (3) (b) (iii)], an applicant for a certificate shall file with the department an application, in such form as the department may prescribe, containing the following information:

(a) a description of the location and of the utility facility to be built thereon;

(b) a summary of any studies which have been made of the environmental impact of the facility;

(c) a statement explaining the need for the facility;

(d) a description of any reasonable alternate location or locations for the proposed facility, a description of the comparative merits and detriments of each location submitted, and a statement of the reasons why the primary proposed location is best suited for the facility; and

(e) such other information as the applicant may consider relevant or as the department may by regulation or order require. A copy or copies of the studies referred to in clause (b) above shall be filed with the department, if ordered, and shall be available for public inspection.

(2) A filing fee shall be deposited in the state general fund. Said fee shall be based upon the estimated cost of the facility according to the declining scale which follows. The applicant shall pay the accumulated sums calculated as follows: three percent (3%) of any estimated cost up to one million dollars (\$1,000,000); plus one percent (1%) of any estimated cost over a million dollars and up to twenty million dollars (\$20,000,000); plus one-half of one percent (0.5%) of any estimated cost over twenty million dollars (\$20,000,000) and up to one hundred million dollars (\$100,000,000); plus one-quarter of one percent (0.25%) of any amount of estimated cost over one hundred million (\$100,000,000) and up to three hundred million dollars (\$300,000,000); plus one-tenth of one percent (0.1%) of any amount of estimated cost over three hundred million dollars (\$300,000,000). It is the intent of the legislature that the revenues derived from the filing fee be used by the department in compiling the information required for rendering a decision on a certificate and for carrying out its other responsibilities under this act.

(3) Each application shall be accompanied by proof of service of a copy of such application on the chief executive officer of each municipality and the head of each government agency, charged with the duty of protecting the environment or of planning land use, in the area in which any portion of such facility is to be located, both as primarily and as alternatively proposed. The copy of such application shall be accompanied by a notice specifying the date on or about which the application is to be filed.

(4) Each application shall also be accompanied by proof that public notice thereof was given to persons, residing in the municipalities entitled to receive notice under subsection (3) of this section, by the publication of a summary of the application, and the date on or about which it is to be filed, in such newspapers as will serve substantially to inform such persons of the application.

(5) Inadvertent failure of service on, or notice to, any of the municipalities, government agencies or persons identified in subsections (3) and (4) of this section may be cured pursuant to orders of the department designed to afford them adequate notice to enable their effective participation in the proceeding. In addition, the department may, after filing, require the applicant to serve notice of the application or copies thereof or both upon such other persons, and file proof thereof, as the department may deem appropriate.

(6) An application for an amendment of a certificate shall be in such form and contain such information as the department shall prescribe. Notice of such an application shall be given as set forth in subsections (3) and (4) of this section.

(7) The board may waive compliance with the time limit of this section if an applicant makes a clear and convincing showing that an immediate need for a facility exists and that the applicant did not have knowledge that the need existed sufficiently in advance of the need to file an application within the time provided in subsection (1) of this section.

(8) *The board may, in its discretion, waive the necessity of filing an application where utility facilities are being relocated pursuant to sections 32-2414 through 32-2416, R.C.M. 1947, and where it is satisfied after an examination of the environmental impact statement filed pursuant to chapter 65 of Title 69, R.C.M. 1947, that such relocation will not significantly affect the environment.*

Approved March 11, 1974

## CHAPTER NO. 116

AN ACT PROVIDING FOR THE SUSPENSION OF ACTION ON CERTAIN APPLICATIONS FOR PERMITS TO APPROPRIATE SURFACE WATER OR FOR CHANGES IN PURPOSE OF USE IN THE YELLOWSTONE RIVER BASIN FOR THREE (3) YEARS OR UNTIL EXISTING RIGHTS HAVE BEEN DETERMINED, WHICHEVER OCCURS FIRST; MAKING RESERVATIONS ESTABLISHED UNDER THE MONTANA WATER USE ACT PREFERRED USES OVER SUCH PERMITS; AND PROVIDING FOR AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is a new section to be numbered 89-8-103, R.C.M. 1947, which reads as follows:

89-8-103. **Statement of legislative findings and policy.** The legislature, noting that appropriations have been claimed, that applications have been filed for, and that there is further widespread interest in making substantial appropriations of water in the Yellowstone River Basin, finds that these appropriations threaten the depletion of Montana's water resources to the significant detriment of existing and projected agricultural, municipal, recreational and other uses, and of wildlife and aquatic habitat. The legislature further finds that these appropriations foreclose the options to the people of this state to utilize water for other future beneficial purposes, including municipal water supplies, irrigation systems, and minimum flows for the protection of existing rights and aquatic life. The legislature pursuant to its mandate and authority under Article IX of the Montana Constitution, declares that it is the policy of this state that before these proposed appropriations are acted upon existing rights to water in the Yellowstone basin must be accurately determined for their protection, and that reservations of water within the basin must be established as rapidly as possible for the preservation and protection of existing and future beneficial uses.

Section 2. There is a new section to be numbered 89-8-104, R.C.M. 1947, which reads as follows:

89-8-104. **Definitions.** Unless the context clearly requires otherwise, in this act:

(1) "Department" means the department of natural resources and conservation.

(2) "Basin" means the Yellowstone River Basin.

(3) "Application" means an application for a permit under the Montana Water Use Act to appropriate surface water from any source of supply within the basin for either or both of the following purposes:

(a) a reservoir with a total planned capacity of fourteen thousand (14,000) acre feet or more, or

(b) for a flow rate greater than twenty (20) cubic feet of water per second.

The term also includes an application for approval under section 89-892, R.C.M. 1947, to change the purpose of use.

(4) "Reservation" means a reservation of water provided for by section 89-890 of the Montana Water Use Act.

Section 3. There is a new section to be numbered 89-8-105, R.C.M. 1947, which reads as follows:

89-8-105. **Suspension of action.** (1) The department may not grant or otherwise take any action on an application until either of the following first occurs:

(a) three (3) years have elapsed from the effective date of this act, or

(b) a final determination of existing rights has been made in the source of supply in accordance with the Montana Water Use Act.

(2) A reservation established before such application for permit is granted is a preferred use over the right to appropriate water pursuant to the permit, and the permit, if granted, shall be issued subject to that preferred use.

Section 4. There is a new section to be numbered 89-8-106, R.C.M. 1947, which reads as follows:

89-8-106. **When department may suspend action.** The department may suspend action on applications not meeting the definition of application in section 2 [89-8-104] of this act if it determines, after a public hearing conducted under the contested case procedures of the Montana Administrative Procedure Act, that the cumulative impact of those applications, if granted, would be contrary to the policies and purposes of this act. If the department suspends action on such applications, the provisions of section 3 [89-8-105] of this act apply.

Section 5. There is a new section to be numbered 89-8-107, R.C.M. 1947, which reads as follows:

89-8-107. **Reservations.** The department may apply for reservations and shall, as rapidly as possible, assist other appropriate state agencies and political subdivisions in applying for reservations within the basin. The United States or any agency thereof may not apply for a reservation of water in the basin under section 89-8-109, R.C.M. 1947, until the requirements of section 3 [89-8-105] of this act are met. Particular emphasis shall be given to applications to reserve water for agricultural, municipal, and minimum flow purposes for the protection of existing rights and aquatic life.

Section 6. There is a new section to be numbered 89-8-108, R.C.M. 1947, which reads as follows:

89-8-108. **Application of act.** This act applies to applications currently pending with the department, as well as applications filed with the department after the effective date of this act.

Section 7. There is a new section to be numbered 89-8-109, R.C.M. 1947, which reads as follows:

89-8-109. **Utility facilities.** This act does not apply to applications to appropriate water for use by a utility facility for which a certificate of environmental compatibility and public need is granted pursuant to the Montana Utility Siting Act of 1973.

Section 8. There is a new section to be numbered 89-8-110, R.C.M. 1947, which reads as follows:

89-8-110. **Certain changes of use allowed.** Notwithstanding any provision of this act, the department may approve a change of purpose of use to agricultural, irrigation, domestic and municipal uses if it determines that the change is not contrary to the policies and purposes of this act.

Section 9. There is a new section to be numbered 89-8-111, R.C.M. 1947, which reads as follows:

89-8-111. **Severability.** If a part of this is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 10. **Effective date.** This act is effective on its passage and approval.

Approved March 11, 1974

## CHAPTER NO. 117

AN ACT TO SUBMIT TO THE QUALIFIED ELECTORS OF MONTANA  
AN AMENDMENT TO ARTICLE IX, SECTION 2, OF THE CON-  
STITUTION OF MONTANA ESTABLISHING A RESOURCE INDEM-  
NITY TRUST IN THE STATE WHICH SHALL BE FOREVER INVIO-  
LATE AND GUARANTEED BY THE STATE AGAINST LOSS OR  
DIVERSION.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Article IX, section 2, of the constitution of the state of Montana is amended to read as follows:

"Section 2. Reclamation. (1) All lands disturbed by the taking of natural resources shall be reclaimed. The legislature shall provide effective requirements and standards for the reclamation of lands disturbed.

(2) *The legislature shall provide for a fund, to be known as the resource indemnity trust of the state of Montana, to be funded by such taxes on the extraction of natural resources as the legislature may from time to time impose for that purpose.*

(3) *The principal of the resource indemnity trust shall forever remain inviolate in an amount of one hundred million dollars (\$100,000,000), guaranteed by the state against loss or diversion."*

Section 3. When this amendment is submitted to the electors of the state of Montana there shall be printed on the ballot the full title and section 1 of this act and the following words:

☐ For the above amendment.

☐ Against the above amendment."

Approved March 11, 1974

## CHAPTER NO. 118

AN ACT AUTHORIZING A COLLECTION SERVICE IN THE MONTANA DEPARTMENT OF REVENUE FOR THE PURPOSE OF CENTRALIZING THE COLLECTION OF ALL DEBTS OWING TO THE STATE OF MONTANA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is a new section to be numbered 84-7101, R.C.M. 1947, which reads as follows:

**84-7101. Department of revenue authorized to establish debt collections service.** The department of revenue is hereby authorized to provide a collection service for the general purpose of centralizing the collection of all debts owing to the state of Montana.

Section 2. There is a new section to be numbered 84-7102, R.C.M. 1947, which reads as follows:

**84-7102. Definitions.** In this act:

(1) The term "state agency" includes all state offices, departments, divisions, boards, commissions, councils, committees, institutions, university units, and other entities or instrumentalities of state government.

(2) The word "department" means the state department of revenue.



Section 3. There is a new section to be numbered 84-7103, R.C.M. 1947, which reads as follows:

**84-7103. Department may assist in debt collection.** The department may assist in the collection of any delinquent account owing to any state agency.

Section 4. There is a new section to be numbered 84-7104, R.C.M. 1947, which reads as follows:

**84-7104. Circumstances where department must assist.** Subject to, and in accordance with, rules and regulations adopted by the department, the department shall render assistance in the collection of accounts owing to any state agency if all of the following procedures have been completed to the satisfaction of the department:

(1) A state agency must make all reasonable efforts to collect money owed to it and must determine that the money and any interest or penalties therefor are uncollectible, in accordance with criteria for uncollectibility formulated by that agency.

(2) Once a state agency has determined an account owed to it uncollectible, it shall certify to the department the amount of the money, interest and penalties, as accurately as can be determined. The department may require submission by the agency of all relevant evidence and other information regarding the debt and may examine the records of any other state agency which may be pertinent in determining the uncollectibility of the debt, unless examination is specifically prohibited by law.

(3) If the department finds that the debt is uncollectible, in accordance with the criteria for uncollectibility of money due that state agency, the department shall direct the agency to write off the debt on its accounts and assign the debt to the department.

Section 5. There is a new section to be numbered 84-7105, R.C.M. 1947, which reads as follows:

**84-7105. Authority of department to collect debt.** Once a debt of a state agency has been assigned to the department of revenue, the department shall have the authority to collect it, including the power to offset tax refunds due to individuals against the debt assigned by the state agency to the department of revenue, provided the department may not exercise this right of offset until the debtor has first been notified by the department and given an opportunity for a hearing.

Section 6. There is a new section to be numbered 84-7106, R.C.M. 1947, which reads as follows:

**84-7106. Agency owed debt to receive all moneys collected.** All moneys collected by the department of revenue on debts assigned to it by the various state agencies shall be deposited to the account or fund of the agency to which the debt was originally owing.

Section 7. There is a new section to be numbered 84-7107, R.C.M. 1947, which reads as follows:

**84-7107. Write-off procedures.** The department may establish proce-

dures for canceling and writing off accounts receivable carried on the books of the various state agencies and which have been assigned to the department of revenue pursuant to section 84-7104, which are uncollectible or the continued pursuance of the collection thereof would cost the state more than the amount collected. Such procedures shall be established in accordance with section 82-110.

Section 8. There is a new section to be numbered 84-7108, R.C.M. 1947, which reads as follows:

84-7108. **Circumstances under which previously written off debt may be collected.** If a debt previously written off under section 84-7107 subsequently becomes collectible, the department shall proceed to collect the money due pursuant to sections 84-7105 and 84-7106.

Section 9. There is a new section to be numbered 84-7109, R.C.M. 1947, which reads as follows:

84-7109. **Debts not collectible under this act.** This act does not apply to unliquidated debts and to debts owed to a state agency for which a procedure for compromise, release, discharge, waiver, cancellation or other form of settlement thereof for reasons other than uncollectibility is by law made specifically applicable to such state agency.

Section 10. There is a new section to be numbered 84-7110, R.C.M. 1947, which reads as follows:

84-7110. **State agencies to adopt rules to conform to act.** All state agencies shall adopt rules, regulations and forms to participate in and carry out the provisions of this act.

Section 11. There is a new section to be numbered 84-7111, R.C.M. 1947, which reads as follows:

84-7111. **Right of hearing to aggrieved persons.** Any person aggrieved from a decision or an action taken under this act shall have the right to present his grievances in the same manner as provided by law for taxpayer appeals.

Approved March 11, 1974

## CHAPTER NO. 119

AN ACT TO REPEAL THE AUTHORITY GRANTED TO CITY COUNCILS TO LEVY A POLL TAX, REPEALING SECTION 11-951, R.C.M. 1947.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 11-951, R.C.M. 1947, is repealed.

Approved March 11, 1974

## CHAPTER NO. 120

AN ACT FOR THE CODIFICATION AND GENERAL REVISION OF

## THE LAWS RELATING TO THE DEPARTMENT OF INSTITUTIONS.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 10-611, R.C.M. 1947, is amended to read as follows:

"10-611. **Hearing — judgment.** (1) The court may conduct the hearing in an informal manner and may adjourn the hearing from time to time. In the hearing of any juvenile case, as distinguished from a case involving a child charged with the commission of or attempt to commit any of the criminal offenses set out in subdivision (2) (b) of section 10-602, the general public shall be excluded and only such persons admitted as have a direct interest in the case. *However, when the hearing in the juvenile court is had on a written petition charging the commission of any felony, persons having a legitimate interest in the proceeding, including responsible representatives of public information media, shall not be excluded from the hearing.* All cases involving children shall be heard separately and apart from the trial of cases against adults.

(2) If the court *finds* that the child is delinquent within the provisions of this act, it may, by order duly entered, proceed as follows:

(a) Place the child on probation or under supervision upon such terms as the court *determines*;

(b) Commit the child to a suitable public institution or agency, except youth forest camps; or commit the child to the department of institutions or to a suitable private institution or agency incorporated under the laws of the state, approved by the department of *social and rehabilitation services*, and authorized to care for children; or place them in suitable foster homes, approved by the department of *social and rehabilitation services*, or the probation department;

(c) In the case of a child of the age of sixteen (16) years or older, who the court feels would be a suitable person for placement at a youth forest camp, the court should notify the department of institutions of such finding and the department of institutions should designate to the court the juvenile facility to which the child should be delivered for evaluation. The court may then commit *the* child to the department of institutions for not to exceed thirty (30) days for the purpose of evaluation as to *the* child's suitability for such placement, and order the child delivered for evaluation to the juvenile facility designated by the *department of institutions*. If after *the* evaluation, the department of institutions reports to the court that *the* child is suitable for placement in a youth forest camp, and if there is space available at *the* camp, the court may commit *the* child directly to the youth forest camp under the terms and conditions of the commitment provided for in this act. If, however, the department of institutions reports to the court that *the* child is not suitable for placement in *the* camp, stating the reasons therefor, he shall be returned to the court for such further disposition as the court *considers* advisable under the provisions of this act. The costs of transporting *the* child to the designated juvenile facility for evaluation and the cost of returning *the* child to the court, should that become necessary, shall be borne by the county of *the* child's residence.

(d) Order such further care and treatment as the court *considers* best for the child, except as herein otherwise provided.

(3) No commitment of any delinquent child to any institution under this act shall be *considered* commitment to a penal institution. No adjudication upon the status of any delinquent child in the jurisdiction of the court shall operate to impose any of the civil disabilities ordinarily imposed by conviction, nor shall any delinquent child be *considered* a criminal by reason of such adjudication, nor shall such adjudication be *considered* a conviction, nor shall any child be charged with or convicted of any crime in any court except as provided in the preceding section of this act. The disposition of the delinquent child or any evidence given in the court is not admissible as evidence against the child in any other case or proceeding.

(4) *When* the court *commits* a delinquent child to any institution or agency, it shall transmit with the order of commitment a summary of its information concerning *the* child.

(5) *When* a child or an adult under the age of twenty-one (21) years is convicted of a felony or felonies or attempt to commit a felony or felonies and is sentenced to imprisonment in the state prison, he shall, throughout the term of imprisonment or until such time as he reaches the age of twenty-one (21) years, have sleeping quarters separate and apart from inmates who are over the age of twenty-one (21) years, and additionally shall be kept separate and apart at other times in those areas where staff and facilities will permit."

Section 2. Section 10-612, R.C.M. 1947, is amended to read as follows:

"10-612. **Form of commitment to state juvenile facility.** *When* under the provisions of this act the court orders a delinquent child committed to the *Mountain View* school, *Pine Hills* school, or other juvenile facility of the department of institutions, the form of commitment shall be as follows:

#### ORDER OF COMMITMENT

State of Montana, County of ....., ss:

In the district court for the.....judicial district.

On the.....day of ....., 19....., .....a minor of this county, .....years of age, was brought before me charged with..... Upon due proof I find that .....is a suitable person to be committed to.....

It is ordered that.....be committed to..... until..... attains the age of 21 or is sooner legally discharged or placed out.

The names, addresses and occupations of the parents are:

| Name  | Address | Occupation |
|-------|---------|------------|
| ..... | .....   | .....      |
| ..... | .....   | .....      |

The names and addresses of other near relatives are:

.....

Witness my hand this ..... day of ..... A.D. 19...

..... Judge."

Section 3. There is a new section numbered 38-106.1, R.C.M. 1947, which reads as follows:

38-106.1. Unless the context requires otherwise, in title 38: (1) "Department" means the department of institutions provided for in title 82A, chapter 10.

(2) "State hospital" means the Warm Springs state hospital.

Section 4. Section 38-107, R.C.M. 1947, is amended to read as follows:

"38-107. **Department may send patient to friends.** The department may, at the expense of the state, when satisfied it will be for the best interest of any insane person, send him to friends outside of the state."

Section 5. Section 38-108(2), R.C.M. 1947, is amended to read as follows:

"38-108(2). **May contract with some other institution.** The department may, when satisfied it will be for the best interest of any insane person in the state, send him to some other institution, with its consent, outside the state. *The expense of sending and supporting him at such an institution must be paid by the state, if the person is indigent.*"

Section 6. Section 38-109, R.C.M. 1947, is amended to read as follows:

"38-109. **Discharge of patients.** The department must *discharge* from the state hospital *a* patient, upon the written report of the hospital medical staff that *the* patient is in satisfactory mental condition to be discharged. *The* written report must be filed and kept in the office of the department, and every inmate on recovery must be ordered released, without requiring a sponsor."

Section 7. Section 38-110, R.C.M. 1947, is amended to read as follows:

"38-110. **Maintenance of indigent persons on discharge.** Upon the discharge of *a* patient *from* the state hospital, the department shall notify the board of public welfare of the county from which *the* patient was committed. *The* county board of public welfare shall at once ascertain whether the discharged patient is in financial need. *If the* patient is found to be in financial need, the county board of public welfare shall properly care for and maintain the discharged patient under the Public Welfare Act until *the* patient is able to care for himself, or *until another* provision has been made for care *of the patient.*"

Section 8. Section 38-120, R.C.M. 1947, is amended to read as follows:

"38-120. **Receipt of nonresident insane pending return to home state.** An insane person, *who is not a resident* of this state, may be received into the state hospital for a period not to exceed thirty (30) days pending return to the state of his residence."

Section 9. Section 38-207, R.C.M. 1947, is amended to read as follows:

"38-207. **Forms of certificates.** The certificate must be made in the form prescribed by, and if *available, on* blanks furnished by the department of institutions."

Section 10. Section 38-208, R.C.M. 1947, is amended to read as follows:

"38-208. **Commitment.** *After the examination is completed and the certificate is filled out, if the judge believes the person so far disordered in his mind as to endanger health, person, or property, then he must issue an order that the person be confined in Warm Springs state hospital. A copy of the order must be filed and recorded by the clerk of the district court of the county. The clerk must also keep in convenient form an index book, showing the name, age, and sex of each person so ordered to be confined in the state hospital, with the date of the order and the name of the insane asylum in which the person is ordered to be confined. No fees must be charged by the clerk for performing any of the duties provided for by this section or in this chapter.*"

Section 11. Section 38-208.1, R.C.M. 1947, is amended to read as follows:

"38-208.1. **Admission of patients prior to legal commitment — when authorized.** *The superintendent of the state hospital may admit a patient who has not been legally committed to the state hospital, when a patient is presented for admission accompanied by a certificate from the county physician in the county in which the patient resides. The certificate shall state that to the best of his knowledge this patient is suffering from acute mania or circular insanity and requires immediate hospitalization, and who, by reason of the absence of the district judge from the county of the patient's residence, has not been legally committed to the state hospital.*"

Section 12. Section 38-208.2, R.C.M. 1947, is amended to read as follows:

"38-208.2. **Legal commitment within five days after emergency admission.** *Within five (5) days after the admission to the state hospital of a patient who has not been legally committed as provided for in section 38-208.1, the superintendent of the state hospital shall either have the patient legally committed thereto by the district court of the third judicial district of the state of Montana in and for the county of Deer Lodge, or shall release and discharge the patient from the state hospital. If the district judge is absent, or if a jury trial is being held by the district judge, and prevents the handling of the commitment, the patient shall be legally committed as soon after the return of the district judge as possible, or as soon as the district judge is available to attend to the admission.*"

Section 13. Section 38-208.3, R.C.M. 1947, is amended to read as follows:

"38-208.3. **Cost of commitment proceedings.** *In all cases provided for by section 38-208.1 the costs of commitment proceedings shall be paid by the county of the patient's residence. After the order of commitment is signed by the district judge, the order and all other papers relative to the commitment of the person shall be forwarded by the clerk of the district court in and for the county of Deer Lodge, to the clerk of the district court of the county of the patient's residence, or of the county from which the patient has been sent to the state hospital, and shall be placed on*

record and filed in that office. *The order and papers* shall not be placed on record and filed in the office of the clerk of the district court of Deer Lodge county, unless the patient is a resident of, or has been sent from Deer Lodge county."

Section 14. Section 38-209, R.C.M. 1947, is amended to read as follows:

"38-209. **Delivery of insane person at state hospital.** The insane person, together with the order of the judge, and the certificate of the physicians must be delivered to the sheriff of the county in which *the* order is made, or to a responsible relative or friend, as determined by the judge who signs *the* order, and by him must be delivered to the *superintendent* of the state hospital. The superintendent of the state hospital may refuse to receive any person upon any order, if the papers presented do not comply with the provisions of this chapter."

Section 15. Section 38-210, R.C.M. 1947, is amended to read as follows:

"38-210. **Moneys of insane person — disposal of.** When *a* person is adjudged insane and ordered committed to the state hospital, or is adjudged to be in such a condition of mind that he should be placed in *the* state hospital for observation, *the money* found on him at the time he is taken into custody must be certified to by the judge, and sent with *the* person to the state hospital. *The money* must be delivered to the superintendent of *the* state hospital, whose receipt for *the money* shall be taken by the officer or other person delivering him to the hospital, who must file *the* receipt with the clerk of the district court of the county in which the proceedings were *held*. If the amount exceeds one hundred dollars (\$100), the excess must be applied to the payment of the expenses of *the* person while in the hospital. If the amount is one hundred dollars (\$100) or less it must be kept and delivered to the person when discharged or released from the hospital or applied in payment of funeral expenses if *the* person dies while in *the* hospital. If *an* amount remains to the credit of *a* person paroled, discharged, or released, or after payment of the funeral expenses of *the* person who dies while in *the* hospital, and *the* amount remains unclaimed for one (1) year after *the* parole, discharge, release, or death, fifty per cent (50%) of *the* amount, but not in any event exceeding fifty dollars (\$50) shall be withdrawn from *the* account and placed in the agency fund in the state treasury, to be expended for indigent patients at *the* times and in *the* manner and for such purposes as may be prescribed by the superintendent of *the* hospital. A balance which remains to the credit of *the* person, shall be transmitted to the county treasurer of the county from which *the* person was sent, and if *a* sum remains after paying the costs of hearing, and transportation to the hospital, the balance shall be paid into the state treasury to the credit of the general fund."

Section 16. Section 38-213, R.C.M. 1947, is amended to read as follows:

"38-213. **Dissatisfied persons — procedure on question of insanity.** (1) If a person ordered to be committed, or any friend in his behalf,

is dissatisfied with the order of the judge committing him, he may, within five days after the making of *the* order, demand that the question of his sanity be tried by a jury before the district court of the county in which he was committed. *That* court must *have* a jury summoned and in attendance at a date stated, not less than five nor more than ten days from the date of the demand for a jury trial.

(2) At *the* trial the cause against the alleged insane must be *presented* by the county attorney of the county, and the trial must be had as provided by law for the trial of civil causes before a jury, and the alleged insane person must be discharged unless a verdict that he is insane is found by at least three-fourths of the jury.

(3) If the verdict of the jury is that he is insane, the judge must adjudge that fact and make an order of commitment as upon the original hearing. *The* order must be presented, at the time of commitment of *the* insane person, to the superintendent of the hospital to which the insane person is committed, and a copy of *the* order must be forwarded by *the* superintendent to the *department of institutions* and filed in its office.

(4) Proceedings under the order must not be stayed, pending the proceedings for determining the question of sanity by a jury, except upon the order of a district judge, with provision made *in the order* for the temporary care and custody of the alleged insane person as may be *considered* necessary. If the district judge, by the order granting the stay, commits the accused insane to the custody of any person other than a peace officer, he may, by *the* order, require a bond for his appearance at the trial. If a judge refuses to grant an application for an order of commitment of an insane person alleged to be dangerous to himself and others, if at large, he must state his reasons for refusal, and any person aggrieved by *his refusal* may demand a trial of the question of the insanity of *the* accused insane, in the manner provided *in this section* for a jury trial when demanded by or on behalf of the accused insane.

(5) If the person sought to be committed is not a poor or indigent person, the costs of the proceedings are a charge upon his estate, or must be paid by persons legally liable for his maintenance, unless otherwise ordered by the judge. If the alleged insane person is adjudged not to be insane, the judge may, in his discretion, charge the costs of the proceedings to the person making the application for an order of commitment, and judgment may be entered against him for the amount thereof and enforced by execution."

Section 17. Section 38-301, R.C.M. 1947, is amended to read as follows:

**"38-301. Transfer of patients to Boulder river school and hospital.** (1) When *a* person is committed to the state hospital as an insane person, and the superintendent and physicians of *the* state hospital determine from examination, tests, and observation *that* the person is not a proper person to be confined in *the* state hospital but should properly be placed in the *Boulder river school and hospital*, the superintendent of the state hospital shall ascertain from the superintendent of the *Boulder river* school, whether or not there is room and accommodations for *the* person at *that* school.



(2) If there is room and accommodations for *the person at the Boulder river school*, the superintendent of the state hospital shall make a certificate in triplicate, which shall give the name of the person to be transferred, the county from which committed to *the state hospital*, the date of commitment and date received at *the state hospital*, and state as fully as possible therein the reasons why *the person* should be transferred from the state hospital to the *Boulder river school*. All three copies of *the certificate* shall be signed by the superintendent and all physicians of the hospital who have examined and observed *the person* while in *the state hospital*. One copy of *the certificate* shall be retained in the files of the *state hospital*, and one copy shall be transmitted to the clerk of the district court of the county from which *the person* was committed to the state hospital.

(3) The clerk of *the district court*, upon receiving a copy of *the certificate*, shall immediately give written notice to the relatives or guardian whose names are shown in the proceedings for the commitment of the person to the state hospital, or *which are disclosed* by any guardianship proceedings with regard to *the person in the court*, stating briefly the contents of *the certificate* and purpose thereof.

(4) Any such relative or guardian may make and file with the clerk of court, within ten (10) days after the date of notice, written protest or objection to the proposed transfer. If a written protest or objection is filed within *the ten (10) days*, the clerk of the court shall notify the district judge thereof, and *the judge shall fix a time and place for the hearing of the protest and objection in open court*, as will give reasonable opportunity for the production and examination of witnesses. If no protest or objection is filed, or if a protest or objection is filed and a hearing held thereon, *and the judge approves the transfer*, the judge shall make an order approving the transfer, *and the transfer may be made*. However, if a protest or objection is filed, and after a hearing thereon, the judge makes an order disapproving *the transfer*, the transfer shall not be made.

(5) The clerk of the court shall, if no protest or objection is filed within the time provided, transmit a written notice, in duplicate, to the superintendent of the state hospital that no protest or objection has been filed. If a protest or objection has been filed and a hearing had thereon *the clerk shall immediately, after the making of any order approving or disapproving the transfer, make a certified copy of the order, in duplicate, and transmit both copies to the superintendent of the state hospital*.

(6) Upon receiving a written notice that no protest or objection has been filed, or upon receiving a written notice of an order approving *the transfer*, one of *the notices* or a certified copy of *the order* shall be placed in the files of the state hospital, and the superintendent of *the state hospital* may then have an attendant of the *state hospital* take *the person* and deliver him to the superintendent of *the Boulder river school*, together with a copy of *the certificate* and a copy of *the notice* or a certified copy of *the order* attached thereto, to the superintendent of *the Boulder river school*. *The certificate is the superintendent's authority for receiving and keeping the person, and takes the place of any commitment thereto*. The cost of transporting *the person* from the *state hospital* to the *Boulder river school* shall be paid out of funds appropriated for the maintenance of the state hospital."

Section 18. Section 38-302, R.C.M. 1947, is amended to read as follows:

**"38-302. Admission of certain inmates at Warm Springs state hospital to Boulder river school and hospital.** If *an* inmate of the state hospital is not so far disordered in mind as to endanger health, person, or property but by reason of being feeble-minded is a proper person for admission to the *Boulder river school and hospital*, the person may be admitted to *that* school by proceedings in the district court of the county in which *the* state hospital is located. *The* proceedings *shall* be in compliance with the laws relating to the admission to *the Boulder river* school."

Section 19. Section 38-303, R.C.M. 1947, is amended to read as follows:

**"38-303. Expenses of examination and transportation.** The expenses of examination and transportation of *the* person shall be paid by the state hospital."

Section 20. Section 38-401, R.C.M. 1947, is amended to read as follows:

**"38-401. Examination of person mentally deranged but not dangerous — physician's certificate.** (1) When an affidavit has been made, warrant issued, hearing had thereon and examination made of the person named in *the* affidavit and warrant, in accordance with sections 38-201 to 38-205, inclusive, the physicians attending *the* hearing and making *the* examination, if they conclude that there is reason to believe that *the* person is disordered in his mind to some extent, but not to such an extent as to endanger health, person, or property, must make a certificate on a form prescribed by the superintendent of *Warm Springs* state hospital, showing as near as possible:

(a) That while they do not believe *the* person to be disordered in his mind to *an* extent as to endanger health, person, or property, they do believe that *the* person may be disordered in his mind to such an extent that he should be admitted to *Warm Springs* state hospital for further examination and observation.

(b) The premonitory symptoms, apparent cause of *the* disordered mind, and the extent and duration thereof.

(c) The nativity, age, residence, occupation, and previous habits of *the* person.

(d) The place *where* he came *from*, and the length of time he has resided in this state.

(e) The names of the nearest relatives, if known, and the name of *the* guardian of *the* person, if there *is* one, with their names and post-office addresses.

(2) *The* certificate must be filed in the office of the clerk of the district court of the county in which *the* hearing is held."

Section 21. Section 38-402, R.C.M. 1947, is amended to read as follows:

**"38-402. Judge's order — observation and examination.** If the physicians' certificate provided for in section 38-401 is made and filed, the judge shall make an order directing that a person named *in the certificate* be placed in the state hospital for such time as he *considers* necessary, but which shall not be less than two (2) nor more than four (4) weeks, for observation and for further examination for the purpose of determining whether he is disordered in his mind, and if so, whether or not his mind is disordered to such an extent as to require *commitment* to *the state* hospital. *The* order shall designate the person to take him to *the* hospital. Certified copies of the physicians' certificate and of *the* order shall be given the person designated in *the* order, and the person so designated shall deliver *the* person to the state hospital and shall at the same time deliver to the superintendent thereof *the* certified copies of *the* physicians' certificate and order, and *that* shall be the authority of *the* superintendent for receiving, keeping, and detaining *the* person in *the state* hospital for the time specified in *the* order."

Section 22. Section 38-403, R.C.M. 1947, is amended to read as follows:

**"38-403. Supplemental order when more time for observation necessary.** When a person is received at the state hospital for observation under any order of a district judge made in accordance with section 38-402, *the* person may be kept in *the state* hospital not exceeding the maximum length of time specified in *the* order, during which time the superintendent and physicians of *the state* hospital shall give the person examinations, tests, and observation and treatment, if any, *which* they *consider* necessary to ascertain and improve his mental condition. *If it appears* to the superintendent and physicians, before the expiration of *the* maximum time specified in *the* order, that *the* time is not sufficient for them to determine or improve the mental condition of *the* person, the superintendent shall so notify in writing the district judge who made *the* order. *The* district judge or any district judge sitting or acting in his place, shall then make a supplemental order authorizing the detention of *the* person in *the* hospital for an additional length of time, not exceeding four (4) weeks in addition to the time specified in the original order. *The* written notice from the superintendent and *the* order shall be filed in the office of the clerk of the district court, and *the* clerk must immediately make a certified copy thereof and *send it* to the superintendent of *the state* hospital. *The* certified copy of *the* order is the authority for *the* superintendent to keep and detain *the* person in *the* hospital for the time specified in *the* order."

Section 23. Section 38-404, R.C.M. 1947, is amended to read as follows:

**"38-404. Release — certificate by superintendent.** If, while a person is being detained in the state hospital under *an* order, made in accordance with sections 38-402 and 38-403, the superintendent and physicians at *the state* hospital, from their examinations, tests and observations of *the* person, determine either that he is not disordered in his mind, or that he is disordered in his mind but not to such an extent as to justify *his commitment*, the superintendent shall release and discharge him from *the state* hospital. A certificate of release and discharge,

in duplicate, shall be made stating the reasons the person *was* released and discharged from *the state hospital*, and the date of discharge and release. *Each copy* shall be dated and signed by *the superintendent*. One (1) copy of *the certificate* shall be retained in the files of the *state hospital* and the other copy shall be *sent* to the clerk of the district court of the county in which the hearing of *the person was held*, and *filed by the clerk* as a part of the records of *the proceeding*."

Section 24. Section 38-405, R.C.M. 1947, is amended to read as follows:

"38-405. **If commitment advisable, procedure — disposition of certificates.** (1) If, while a person is being detained in the state hospital under an order, made in accordance with sections 38-402 and 38-403, the superintendent and physicians of the hospital, from their examinations, tests and observations determine that *the person* is disordered in his mind to such an extent as to justify *commitment to the state hospital*, the superintendent shall make out, in duplicate, a certificate so stating and also stating in as much detail as *he considers* necessary, the apparent cause or class of *the disorder*, its progress, the probable duration and condition of the disease and the probable result of any treatment which may be given him in *the state hospital*. Each copy of *the certificate* shall be signed by the superintendent and by each physician of the hospital who has taken part in the examinations, tests, and observations of *the person*.

(2) One (1) of *the certificates* shall be retained in the files of the *state hospital* and the other copy shall be *sent* to the clerk of the district court of the county in which the hearing was held. Upon receipt of *the certificate* by *the clerk* of the district court he shall file *the certificate* and call *the certificate* to the attention of the district judge who made the order for *the person* to be placed in *the state hospital* for observation, or to the attention of any district judge of the judicial district in which *the county* is situated, or to the attention of any district judge who is sitting or acting in place of the judge who made the order directing that *the person* be placed in *the state hospital* for observation. As soon as possible thereafter *the district judge* must make an order in duplicate that *the person* be committed to and confined in the state hospital. Both copies of *the order* must be delivered to the clerk of the court who must file and record one (1) of *the orders* and send the other to the superintendent of *the state hospital* which is the authority of *the superintendent* to confine *the person* in *the state hospital*. All of the provisions of section 38-208 applicable thereto apply to all orders made under this section."

Section 25. Section 38-406.2, R.C.M. 1947, is renumbered section 38-408.1, and is amended to read as follows:

"38-408.1. **Voluntary admission for at least sixty days authorized — application — earlier release — proceedings for judicial commitment — right to release — costs of commitment proceedings — transportation costs.** (1) Subject to the availability of suitable accommodations, the superintendent of *the state hospital* shall admit to the *state hospital* a person who is mentally ill or who has symptoms of mental illness for whom voluntary application is made in accordance with subsection (2) of this section. *Under this section, mental illness means a psychiatric or other disease which substantially impairs mental health.*

- (2) An application for voluntary admission to the *state* hospital shall:
- (a) Be on forms prescribed by the *state* hospital and furnished by the *state* hospital to the county attorney;
  - (b) Be signed before two witnesses by the prospective patient *seeking admittance*, or in the case of a minor, by his parent or guardian;
  - (c) Be certified by a licensed physician who has personally examined the prospective patient and believes he is mentally ill or has symptoms of mental illness or is in need of psychiatric evaluation and treatment; and
  - (d) Contain a statement by the prospective patient, or his parent or guardian that, unless earlier released on convalescent status or discharged, the prospective patient will remain in the *state* hospital for diagnosis and treatment for at least sixty (60) days.
- (3) If in the opinion of the superintendent detention of the patient for the entire sixty (60) day period is unnecessary, the superintendent may release or discharge the patient.
- (4) Proceedings for judicial commitment shall not be commenced with respect to a person admitted on voluntary application unless after the sixty (60) day period of compulsory detention the patient requests his release in writing or whose release is requested in writing by his parent, guardian, spouse, or next of kin. Upon receipt of *the* request, the patient shall be released within five (5) days after the request is received unless the superintendent files a petition with the district court of the third judicial district in the county of Deer Lodge certifying that in his opinion the release of the patient would be unsafe for the patient or others, or that the patient is in need of care and treatment in the *state* hospital and because of his illness lacks sufficient insight or capacity to make responsible decisions with respect to his hospitalization.
- (5) The superintendent of the *state* hospital shall inform patients of their right to release as provided in this section.
- (6) The costs of commitment proceedings under this section shall be paid by the county of the patient's residence. When the proceedings are completed, the clerk of the district court for the county of Deer Lodge shall send all papers relating to the proceedings to the clerk of the district court of the county of the patient's residence.
- (7) The costs of transportation to the *state* hospital under this section shall be provided by the patient, his parents, guardian, or the welfare department of the county of the patient's residence."

Section 26. Section 38-407, R.C.M. 1947, is amended to read as follows:

"38-407. **Trial by jury, when.** *When an order is made under section 38-405 committing a person to the state hospital, and the person, or any relative, friend, or guardian of the person, is dissatisfied with the order, he may, within ten (10) days after the making of the order, demand the question of his sanity be tried by a jury, before the district court of the county from which he was committed. The demand must be made in writing, served upon the county attorney, and filed with the clerk of the dis-*

strict court of *the* county. Upon demand being made, served, and filed, a trial must be *held* in the manner provided by section 38-213, and all of the provisions of *that* section applicable thereto apply to *the* trial and proceedings in connection therewith."

Section 27. Section 38-408, R.C.M. 1947, is amended to read as follows:

"38-408. **Duty of clerk of district court.** *When an order made by a district judge under section 38-405 has been filed by a clerk of the court, the clerk must immediately notify in writing the county board of public welfare of the county where the order was made.*"

Section 28. Section 38-502, R.C.M. 1947, is amended to read as follows:

"38-502. **Convalescent leave of patients from Warm Springs state hospital.** The superintendent of *Warm Springs* state hospital may grant a convalescent leave to a patient under general conditions prescribed by the department of institutions."

Section 29. Section 38-503, R.C.M. 1947, is amended to read as follows:

"38-503. **Permitting patient to leave.** A patient of the state hospital may be permitted by the superintendent to leave the institution on convalescent leave and remain in the custody of a parent, relative, legal guardian, or other person."

Section 30. Section 38-504, R.C.M. 1947, is amended to read as follows:

"38-504. **Termination of convalescent leave.** All patients, while on convalescent leave, remain in the legal custody, and under the control of the department. *At any time during the convalescent leave, upon evidence satisfactory to the superintendent or to the department that convalescent leave should terminate, the patient must be returned to the state hospital. The written order of the department, certified by the superintendent of the hospital, is sufficient warrant to an officer to retake and return the patient to actual custody in the state hospital.*"

Section 31. Section 38-505, R.C.M. 1947, is amended to read as follows:

"38-505. **Report by person under whom patient is placed on convalescent leave.** The person *with whom the patient is placed* on convalescent leave shall report the physical, moral, and mental condition of the patient to the superintendent either in person or by writing as often and as fully as the superintendent may require, and subject to *the* recommendations and regulations *which* the department may determine. In case of failure to report on request, the inmate may be returned to the state hospital. The patient shall be accessible to representatives of the *state* hospital."

Section 32. Section 38-506, R.C.M. 1947, is amended to read as follows:

"38-506. **Support of patient placed on convalescent leave, discharged by lapse of time.** (1) *When the state hospital places a patient on convalescent leave, it is not liable for his support while on convalescent*

leave. *Liability devolves* upon the legal guardian, parent, or person under whose care the patient is placed on convalescent leave, or upon any other person legally liable for his support. The public welfare officials of the county where the patient resides or is found, *are* responsible for providing relief and care for *the* patient on convalescent leave who is unable to maintain himself, or who is unable to secure support from the person under whose care he was placed on convalescent leave, *like* any other person in need of relief and care, under the public welfare laws. The person under whose care the patient is placed on convalescent leave or any other person legally liable for his support, shall, if *the* convalescent leave is revoked, be liable for any expense incurred by the state or county in procuring the return of *the* patient to the hospital.

(2) The superintendent of the state hospital shall place on convalescent leave any patient under his control when he believes it *is in* the best interests of *the* patient and society to do so. If *a* patient placed on convalescent leave *is* not returned to *the* institution within a period of two (2) years, he *is considered* discharged therefrom and entry shall be made accordingly in the records of the institution. If *a* patient who has escaped from *the* institution *is* not returned thereto within two (2) years, he *is considered* discharged therefrom and an entry *shall be* made accordingly in the records of *the* institution. When a patient is discharged whether by convalescent leave continuing for a period of two (2) years or by having escaped and not having been returned within two (2) years, the superintendent of the state hospital shall immediately notify in writing the judge of the court by which *the* patient was committed. A person so discharged *may not* be recommitted to the state hospital except by court order and upon proceedings as required by law for commitment in the first instance. *This section does not restore the civil rights of persons so discharged or restore sanity, or relieve the superintendent of the state hospital from the obligation of supervising patients on convalescent leave to the extent of available facilities and finances."*

Section 33. Section 38-507, R.C.M. 1947, is amended to read as follows:

**"38-507. Clothing for patient on convalescent leave or discharged patient.** A patient or inmate *may not* be discharged or placed on convalescent leave from the state hospital without suitable clothing adapted to the season in which he is discharged."

Section 34. Section 69-6403, R.C.M. 1947, is amended to read as follows:

**"69-6403. Application for sterilization — hearing — showing required of applicant — designation of surgeon — written consent.** (1) *The department of institutions shall* receive applications by or on behalf of persons covered by this act to be sterilized. Upon receipt of *the* application, which shall be in any form calculated to apprise the board of *eugenics* of the desire of the applicant to be sterilized, the board shall conduct a hearing at which the applicant must be present in person for examination by the board and evidence must be presented to establish:

(a) Whether the applicant is one of the group covered by this act;

(b) Whether it would be in the best interest of the applicant and the state for the applicant to be sterilized;

(c) Whether evidence by a qualified clinical geneticist or by someone recognized by *the* board of eugenics as having expertise in clinical genetics indicates that sterilization is desirable and beneficial to the applicant;

(d) Whether the applicant, whether or not a minor, is capable of understanding and does understand the nature and consequences of the medical treatment he or she will undergo and with *this* understanding voluntarily consents thereto;

(e) Whether *the* medical treatment can be carried out without unreasonable risk to the life and health of the applicant;

(f) The method and manner in which *the* sterilization is to be accomplished.

(2) At *the* hearing the applicant shall designate the person to perform *the* sterilization who may be any physician and surgeon licensed to practice medicine in the state. *The* applicant at *the* hearing shall sign a written voluntary consent to *the* sterilization in the form to be provided by the *department of institutions*."

Section 35. Section 69-6404, R.C.M. 1947, is amended to read as follows:

"69-6404. **Findings prerequisite to approval — certificate.** (1) If, after the hearing, the board of *eugenics finds*:

(a) That the applicant is one of the group covered by this act;

(b) That it would be in the best interest of the applicant and the state that the applicant be sterilized;

(c) That the applicant, whether or not a minor, is capable of understanding and does understand the nature and consequences of the medical treatment he or she will undergo and with such understanding voluntarily consents in writing thereto;

(d) That such medical treatment can be carried out without unreasonable risk to the life and health of the applicant;

(e) That the method and manner in which *the* sterilization is to be accomplished is by such procedures and under such conditions as are medically approved according to the standards for such procedures in the state;

(f) That the person designated to perform *the* sterilization is one qualified under this act to perform the *sterilization*;

(g) That the applicant has in writing voluntarily consented to *the* medical treatment;

(h) That the parents or guardian, if any exist, have given written consent to the sterilization.

(2) It shall make a certificate reciting *the* findings and signed by all members of the board. The original of *the* certificate shall be sent by *the*



*department of institutions* to the physician designated by the applicant to perform the medical treatment; one copy thereof shall be sent to the applicant or his or her parent, guardian or custodian and one copy to remain in the permanent files of the *department of institutions*. Upon receipt of the certificate the physician designated to perform the medical treatment may proceed with *the* medical treatment in accordance with the certificate. Arrangements for *the* medical treatment shall be made between the physician designated in the certificate and the applicant or his or her parent, guardian, or custodian."

Section 36. Section 69-6405, R.C.M. 1947, is amended to read as follows:

**"69-6405. No civil or criminal liability arises from sterilization — exception.** Neither the members of the board of eugenics nor any physician and surgeon or assistant concerned nor any other person participating in the execution of the provisions of this act in conformity with the board's certificate *is* thereafter liable either civilly or criminally to anyone for having performed or authorizing the performance of *the* sterilization. *The* physician or surgeon or assistant concerned is liable for any damage caused by the negligent performance of *the* sterilization in accordance with the general law of the state covering such negligence."

Section 37. Section 69-6406, R.C.M. 1947, is amended to read as follows:

**"69-6406. Certificate that applicant does not possess capacity for voluntary consent to sterilization — person disregarding certificate guilty of misdemeanor and civilly liable—exception.** If, upon *the* hearing, the board of eugenics *finds* that the applicant does not possess the capacity for voluntary consent to sterilization, as set forth in section 69-6403 and section 69-6404, the board shall make a certificate setting forth *that* finding. *The department of institutions* shall *send the original* to the physician designated by the applicant to perform *the* medical treatment; one copy shall be sent to the applicant or his or her parent, guardian or custodian, and one copy to remain in the permanent files of the *department*. *After the certificate is filed, it is* unlawful, and punishable as a misdemeanor, for any person to perform or assist in the performance of a sterilization of the applicant or to produce or assist directly or indirectly in the procurement of such sterilization *on the* applicant, and any such person shall be civilly liable for damages for the performance or the procuring directly or indirectly of the performance of eugenical sterilization upon *the* applicant. However, nothing in this act shall prohibit a physician, at the request of the applicant, his or her parent, guardian or custodian, from performing a sterilization procedure on the applicant for purely medical as distinguished from eugenical reasons."

Section 38. Section 80-1401, R.C.M. 1947, is amended to read as follows:

**"80-1401. Purpose of department.** *The* department of institutions shall utilize at maximum efficiency the resources of state government in a co-ordinated effort to restore the physically or mentally disabled, to rehabilitate the violators of law, to sustain the vigor and dignity of the

aged, to provide for children in need of temporary protection or correctional counseling, to train children of limited mental capacity to their best potential, to rededicate the resources of the state to the productive independence of its now dependent citizens, and to co-ordinate and apply the principles of modern institutional administration to the institutions of the state."

Section 39. Section 80-1402, R.C.M. 1947, is amended to read as follows:

"80-1402. **Definition of terms.** *Unless the context requires otherwise, in title 80:*

(1) "Department" means the department of institutions *provided for in title 82A, chapter 8.*

(2) "Director" means the director of institutions *provided for in section 82A-801.*

(3) "Board" means the board of institutions *provided for in section 82A-806.*

(4) "Institution" means any of the institutions listed in section 80-1403."

Section 40. Section 80-1403, R.C.M. 1947, is amended to read as follows:

"80-1403. **Institutions in department.** (1) The following institutions are in the department:

- (a) Galen state hospital
- (b) Montana veterans' home
- (c) State prison
- (d) Montana children's center
- (e) Mountain View school
- (f) Pine Hills school
- (g) Boulder river school and hospital
- (h) Warm Springs state hospital
- (i) Montana center for the aged
- (j) Swan river youth forest camp
- (k) Eastmont training center

(l) *Any other institution which provides care and services for juvenile delinquents including but not limited to youth forest camps and juvenile reception and evaluation centers.*

(2) *A state institution may not be moved, discontinued, or abandoned without prior consent of the legislative assembly."*

Section 41. Section 80-1405, R.C.M. 1947, is amended to read as follows:

"80-1405. **Powers and duties of department.** The *department* shall:

(1) *Adopt rules for the admission, custody, transfer, and release of residents of institutions except as otherwise provided by law. However, no such rules shall amend or alter the statutory powers and duties of the state board of pardons.*

(2) *Subject to the functions of the department of administration, lease or purchase lands for use by institutions, and classify those lands to determine which are of such character as to be most profitably used for agricultural purposes, taking into consideration the needs of all institutions for the food products that can be grown or produced on the lands, and the relative value of agricultural programs in the treatment or rehabilitation of the persons confined in the institutions.*

(3) *Utilize the staff and services of other state agencies and units of the university of Montana, within their respective statutory functions, to carry out the purposes of this act.*

(4) *Propose programs to the legislative assembly to meet the projected long-range needs of institutions, including programs and facilities for the diagnosis; treatment, care, and aftercare of persons placed in institutions.*

(5) *Encourage the establishment of programs at the local level for the prevention and rehabilitation of physical and mental disability."*

Section 42. Section 80-1406, R.C.M. 1947, is amended to read as follows:

"80-1406. **Warden and superintendents of institutions.** The warden or superintendents of institutions in the department are responsible for the immediate management and control of their respective institutions, subject to the general policies and programs established by the department."

Section 43. There is a new section to be numbered 80-1407.1, R.C.M. 1947, which reads as follows:

80-1407.1. **Powers and duties of board — hearings.** (1) The board of institutions shall:

(a) Act in an advisory capacity to the department. "Advisory capacity," as used in this subsection, means the board may furnish advice, gather information, make recommendations, and does not mean administering a program or function or setting policy.

(b) Hear grievances of residents of institutions within the department or employees of the department, as provided for in this subsection. A resident of an institution within the department or an employee of the department who has a grievance, and has exhausted all other administrative remedies within the department, is entitled to a hearing before the board for a resolution of the grievance. A grievance of an employee means an employee's dissatisfaction concerning a serious matter of his employment based upon work conditions, supervision, or the result of an administrative action. A grievance of a resident means any serious matter affecting his care or treatment.

(2) No actions by the board may infringe upon the statutory functions of the board of pardons.

Section 44. Section 80-1410, R.C.M. 1947, is amended to read as follows:

"80-1410. **Establishment of juvenile correctional facilities.** The department, within the annual or biannual budgetary appropriation, may establish, maintain, and operate facilities to *properly* diagnose, care for, train, educate, and rehabilitate children in need of these services. *The children must be ten (10) years of age or older and under twenty-one (21) years of age. The facilities include but are not limited to the Mountain View school, the Pine Hills school, and the youth forest camp.*"

Section 45. Section 80-1411, R.C.M. 1947, is amended to read as follows:

"80-1411. **Control and management of juvenile correctional centers — rules — special programs.** *The facilities provided for in section 81-1410 shall exercise their functions under the supervision, and general management of the department. Except where otherwise provided by law, the department by rules shall establish standards of care, policies of admission, transfers, discharge, and aftercare supervision in order to provide adequate care for children and adequate service to the courts. The department shall develop special programs within each facility which are adaptable to the particular needs of its operation.*"

Section 46. Section 80-1412, R.C.M. 1947, is amended to read as follows:

"80-1412. **Youth forest camp — work program.** In the case of a youth forest camp, a work program shall be provided by the *department of natural resources and conservation*, and shall be carried out with co-operation between *that department* and the camp superintendent."

Section 47. Section 80-1413, R.C.M. 1947, is amended to read as follows:

"80-1413. **Participation by governing boards in research programs.** *The department may direct a penal, corrective, or custodial institution of the state to participate in and co-operate with programs of research and development being conducted and carried on by any units of the Montana university system, by any of the other educational institutions of the state of Montana, or by any foundation or agency thereof, in the fields of science, health, education, and natural resources. These programs may include the voluntary participation of the inmates of the institution in testing and experimental work conducted as a part thereof. Any funds received from the authorized programs may be shared with the participating inmates or otherwise held and used for the welfare and rehabilitation thereof, and shall not become a part of the regular budgeted operation of the institution.*"

Section 48. Section 80-1414, R.C.M. 1947, is amended to read as follows:

"80-1414. **Aftercare agreement to be signed by child before release from juvenile facility to custody of department.** A child released by the department from one of the state juvenile facilities to the supervision, custody, and control of the department shall, before *his*

*release, sign an aftercare agreement containing the terms and conditions under which the child is released."*

Section 49. Section 80-1415, R.C.M. 1947, is amended to read as follows:

**"80-1415. Control over minor so released vested in department.** The department has control over a child released *under section 80-1414* until he attains the age of eighteen (18) years, subject, however, to the general jurisdiction of the various courts of Montana for acts committed by *the* child while under the control of the department."

Section 50. Section 80-1416, R.C.M. 1947, is amended to read as follows:

**"80-1416. Detention of child who violates aftercare agreement — delivery on request to department.** A child who violates the terms and conditions of his aftercare agreement may be detained, by the department or by *a* law officer of the state, county, or city of the state, upon certificates in writing to *the* officer by the department to the effect that *the* child has violated the terms and conditions of his aftercare agreement. Upon detention by *the* law officer *the* child shall, on request, be delivered to the custody of the department, *and the department may:*

- (1) *Return the* child to one of the juvenile facilities of the state; or
- (2) *Continue the* child under the supervision of the *department."*

Section 51. Section 80-1501, R.C.M. 1947, is amended to read as follows:

**"80-1501. Industrial activities permitted at institutions — powers of department — incentive pay to inmates.** The department of institutions may:

(1) Establish industries in institutions which will result in the production or manufacture of goods that may be needed by institutions and other state agencies and that will assist in the rehabilitation of residents in institutions;

(2) Print catalogs describing goods manufactured or produced by institutions and distribute the catalogs;

(3) Fix the sale price for goods produced or manufactured at institutions. *Prices* shall not exceed prices existing in the open market for goods of comparable quality.

(4) Require institutions to purchase needed goods from other institutions;

(5) Provide for the repair and maintenance of property and equipment of institutions by residents of institutions;

(6) Provide for the repair and maintenance at an institution of furniture and equipment of any state agency;

(7) Provide for the manufacture at an institution of motor vehicle license plates and other *related* articles;

(8) In case of emergency, and with the approval of the *department*, sell agricultural products and livestock on the open market. Receipts from *these* sales shall be deposited in the general fund.

(9) Provide for the manufacture at an institution of highway, road, and street marking signs for the use of the state or any of its political subdivisions;

(10) Pay an inmate of the state prison an amount not exceeding fifty cents (\$.50) per day as an incentive for the performance of work, based on the following criteria:

- (a) Knowledge and skill
- (b) Attitude toward authority
- (c) Physical effort
- (d) Responsibility for equipment and materials

(e) Regard for safety of others. All *these* wages shall be paid from receipts from the sale of goods produced or manufactured at the institution where the resident resides."

Section 52. Section 80-1601, R.C.M. 1947, is amended to read as follows:

"80-1601. **Institutions subject to per diem charge.** The department of institutions shall collect and process per diem payments for the care of residents in the following institutions and for the care of those persons in foster homes or group homes under *provisions* of the department:

- (1) Montana children's center
- (2) Warm Springs state hospital
- (3) Boulder river school and hospital
- (4) Galen state hospital
- (5) Montana veterans' home
- (6) Montana center for the aged
- (7) Eastmont training center."

Section 53. Section 80-1603, R.C.M. 1947, is amended to read as follows:

"80-1603. **Monthly assessment of charges — annual computation of rate — investigation — claim of state — review — deposit of receipts.** (1) The department shall assess monthly against each resident or responsible person, the full per diem charge, a proportionate share of the per diem charge, or no per diem charge, based upon financial information given to the department during its investigation. The per diem shall be computed on July 1 of each year by the *department*.

(2) For the purpose of *these* investigations, every agency of the state is required to render all reasonable assistance to the department in obtaining all information necessary for the proper implementation of the pur-

poses of *this* investigation. A representative of the department, duly authorized by the director, *may* administer oaths, take testimony, subpoena and compel the attendance of witnesses and the production of books, papers, records, and documents in connection with the duty of securing payments for support as provided by this act. A person *who fails* to obey *the* subpoena, upon petition of the department, to any judge of the district court of the state, may be ordered by the judge to appear and show cause for his disobedience of the subpoena. The judge, *after the* hearing, may order that the subpoena be obeyed, or if it is made to appear to the judge that the subpoena was for any reason inappropriately issued, may dismiss the petition. A person who fails to obey the subpoena when ordered to do so by the judge may be punished for contempt of court on application of the district court by the *department*.

(3) The state *has* a claim against the estate of *a* patient and against the estate of *a* responsible person, for *an* amount due to the state at the date of death of *the* resident or *the responsible* person. *The* claim against the estate of *a* responsible person *does* not have priority against *the* estate for the amount necessary to rear and educate surviving children of the responsible person.

(4) The attorney general shall collect any claim which the state may have against such estate. *This* claim *may not* be enforced against any real estate while it is occupied as a home by the surviving spouse or the resident or responsible person.

(5) If a resident or responsible person disagrees with the determination of the department as to the ability of *the* resident or responsible person to pay any part of the per diem charge, an appeal may be filed within thirty (30) days of *the* determination with the board of institutions. If *the* resident disagrees with the determination of the appeal by the board of institutions, an appeal may be filed *in* any court of record in Montana having jurisdiction of the resident or responsible person liable for *the* payment.

(6) The department may, at any time, review and change *a* determination for per diem payments. In any case, however, *a* resident of an institution *may not* be released by reason of the nonpayment of the per diem, if in the judgment of the superintendent of the institution at which he is a resident, *this* release is medically inadvisable.

(7) A per diem *payment* received by the department shall be deposited in the state treasury to the credit of the general fund."

Section 54. Section 80-1909, R.C.M. 1947, is amended to read as follows:

"80-1909. **Establishment of intensive rehabilitation center authorized.** Within the budgetary limits provided by law, the *department of institutions may* establish on property owned by the state, on which prison facilities are or may be located, a prison facility designed to *segregate* certain types of prisoners."

Section 55. Section 80-2105, R.C.M. 1947, is amended to read as follows:

"80-2105. **Commitment of resident to Mountain View school or Pine Hills school.** *When a child who resides at the Montana children's center becomes incorrigible, or when his conduct endangers the welfare of the other residents of the home or any other person, the superintendent, with the consent of the department, shall petition the district court for commitment of the child to the Mountain View school or the Pine Hills school.*"

Section 56. Section 80-2106, R.C.M. 1947, is amended to read as follows:

"80-2106. **Transfer of child to mental institution — notice to parents or guardian.** (1) The superintendent of the Montana children's center may, with the approval of the department, transfer a child to *Warm Springs* state hospital or *Boulder river* school and hospital. The transfer order must be certified by a licensed physician that he has personally examined the child and is of the opinion that he is mentally ill or mentally retarded, as the case may be.

(2) Unless a medical or psychiatric emergency exists, fifteen (15) days prior to the transfer the *department* shall send notice of the proposed transfer to the parents or legal guardian of the child, and to the district court which committed the child. In the case of an emergency transfer, the *department* shall send notice within seventy-two (72) hours after the time of transfer."

Section 57. Section 80-2213, R.C.M. 1947, is amended to read as follows:

"80-2213. **University aid to residents of schools.** The department may, on the recommendation of the superintendent, authorize a resident of the *Mountain View* school or *Pine Hills* school who has completed high school, and who is otherwise eligible, to receive up to eight hundred dollars (\$800) per year toward his expenses incurred in attending a unit of the university of Montana. The money may be used for transportation, clothing, books, board and room, and shall be paid in the same manner as other expenses of the school. The university of Montana shall not charge any fees or tuition for *these* residents. No more than eight (8) residents of each school may receive these benefits each year. The department shall notify the board of regents *before* August 1 of each year of the residents it has designated to receive the benefits for the forthcoming school year."

Section 58. Section 80-2310, R.C.M. 1947, is amended to read as follows:

"80-2310. **Mental retardation center at Glendive—services provided.** The mental retardation center at Glendive *is the* "Eastmont training center" for residential and outpatient care of mentally retarded persons residing in Montana. The center may admit mentally retarded persons not residing in Montana in those circumstances in which Montana has agreed to do so by agreement with any other state. The center shall provide services similar to those provided at *Boulder river* school and hospital. *However*, the center may not be a duplication of *Boulder river* school and hospital, but shall be an extension thereof."



Section 59. Section 80-2312, R.C.M. 1947, is amended to read as follows:

**"80-2312. Supervision of Glendive center — transfers to Boulder river school and hospital.** The *department* shall *establish and direct the* services to be provided at the center. The *department* shall provide for temporary transfers from the Eastmont training center to the Boulder river school and hospital for special medical, psychological, surgical, and other services."

Section 60. Section 80-2401, R.C.M. 1947, is amended to read as follows:

**"80-2401. Location and function of hospital.** The institution located at Warm Springs is the "Warm Springs state hospital." The *functions* of the state hospital *are* the care and treatment of mentally ill persons and alcoholics."

Section 61. Section 80-2401.1, R.C.M. 1947, is amended to read as follows:

**"80-2401.1. Definition of terms.** *Unless the context requires otherwise, in this act.*

(1) "Public mental health facility" *means* any public service or group of services *operated by* the department of institutions offering mental health care on an inpatient or outpatient basis to the mentally ill.

(2) "Community comprehensive mental health center" *means* a facility, not necessarily encompassed within one building, offering at least the following five (5) basic mental health services to the public:

- (a) Twenty-four (24) hour inpatient care;
- (b) Part-time hospitalization;
- (c) Outpatient service;
- (d) Emergency service;
- (e) Consultation and education in mental health.

(3) "Mental health clinic" *means* an outpatient facility offering mental health care to the public."

Section 62. Section 80-2402, R.C.M. 1947, is amended to read as follows:

**"80-2402. Qualifications of superintendent.** The superintendent of the Warm Springs state hospital shall be a licensed physician who has fulfilled the residency requirements of the American Board of Psychiatry and Neurology in the speciality of psychiatry."

Section 63. Section 80-2403, R.C.M. 1947, is amended to read as follows:

**"80-2403. Functions of department.** The department shall:

(1) Take cognizance of matters affecting the mental health of the citizens of the state;

(2) Initiate preventive mental hygiene activities of the state's mental health program, including but not limited to, the implementation of mental health care and treatment, prevention, and research as can best be accomplished by community centered services. Such means shall be utilized to initiate and operate these services in co-operation with local agencies as established under sections 80-2406 and 80-2407.

(3) Make scientific and medical research investigations relative to the incidence, cause, prevention, and care of mental illness;

(4) Collect and disseminate information relating to mental hygiene;

(5) Prepare a comprehensive plan for the development of public mental health services in the state. *The* public mental health services shall include, but not be limited to, community comprehensive mental health centers, mental hygiene clinics, traveling service units, consultative and educational services.

(6) Provide by regulation for the examination of persons, who apply for examination or who *are* admitted either as inpatients or outpatients into *Warm Springs* state hospital or other public mental health facility under the supervision and control of the *department*, for the purpose of diagnosing and prescribing treatment of mental illness;

(7) Receive from agencies of the United States and other agencies, persons or groups of persons, associations, firms or corporations, grants of money, receipts from fees, gifts, supplies, materials, and contributions, for the development of mental health services within the state."

Section 64. Section 80-2405, R.C.M. 1947, is amended to read as follows:

**"80-2405. Department to control public mental health programs — establishment of standards, qualifications and compensation — compliance with federal guidelines.** The department shall control the public mental health programs which receive any state assistance, by *adopting* rules and standards for providing mental health facilities and services. It shall set minimum standards for programs, *and* establish appropriate qualifications and compensation scales and personnel policies for persons employed in *these* programs. All public mental health facilities and services shall, subject to the approval of the department, comply with existing federal guidelines and with requirements which will enable them to qualify for available matching funds."

Section 65. Section 80-2406, R.C.M. 1947, is amended to read as follows:

**"80-2406. Clinics and community services.** (1) *The department* may establish and conduct community comprehensive mental health centers, mental health clinics, and other facilities in cities, towns, and areas of the state for the purpose of aiding in the prevention, diagnosis, and treatment of mental illness. Such centers, clinics, or other facilities may be provided directly by state agencies or indirectly through contract or co-operative arrangements with other agencies of government, regional or local, private or public agencies, private professional persons or hospitals, under rules *adopted* by the *department*.

(2) State funds specifically appropriated for regional mental health service programs shall not exceed fifty per cent (50%) of the total expenditures of the programs."

Section 66. Section 80-2407, R.C.M. 1947, is amended to read as follows:

"80-2407. **Mental health regions.** (1) Mental health regions shall be established in the state mental health plan and shall conform to the mental health regions as established in the state mental health construction plan promulgated by the board of health *and environmental sciences* under sections 82-3314 to 82-3318, and the federal Community Mental Health Centers Act.

(2) Upon the establishment of the mental health regions, the county commissioners in each of the various counties in a region shall designate a person from their respective county to serve as a representative of the county on a regional mental health board. *The* board shall be established under guidelines adopted by the *department*. All appointments to *the* board shall be for terms of two (2) years.

(3) The duties of *an* organized regional mental health board include:

(a) Annual review and evaluation of mental health needs and services within *the* region;

(b) Submission to the *department* and to each of the participating counties within the region of plans and budget proposals to provide and support mental health services within the region;

(c) Establishment of a recommended proportionate level of financial participation by each of the counties involved in the provision of mental health service within the limits of this section;

(d) Receipt and administration of such moneys and other support as are made available for the purpose of providing mental health services by the participating agencies, including grants from the United States government and other agencies, receipts for established fees for services rendered, tax moneys, gifts, donations, and other support.

All funds so received by the board shall be used to carry out the purposes of this act.

(e) Supervision by appropriate administrative staff personnel of the operation of community mental health services in the region;

(f) Keeping all records of the board and making reports *which are* required.

(4) Regional mental health board members shall be reimbursed from funds of the board for actual and necessary expense incurred in attending meetings and in the discharge of other board duties when assigned by the board.

(5) The regional board of mental health may submit to the board of county commissioners of each of the counties within the constituted mental health region an annual budget, specifying each county's recom-

mended proportionate share, not later than June 10 in each year. If the board of county commissioners *includes* in the county budget the county's proportionate share of the regional board's budget, it shall be designated as a participating county. Funds for each participating county's proportionate share for the operation of mental health services within the region shall be derived from the county's general fund. *If* the general fund is insufficient to meet the approved budget, a levy not to exceed one (1) mill may be made on the taxable valuation in addition to all other taxes allowed by law to be levied on such property.

(6) The regional board of mental health, with the approval of the *department*, may establish a schedule of fees for mental health services supported by financial contributions of the region's participating counties. *The* fees shall be paid by each nonparticipating county for services rendered to the residents of *the* nonparticipating county. *The* fees may be received by the board and used to implement the budget and to provide services."

Section 67. Section 80-2409, R.C.M. 1947, is amended to read as follows:

"80-2409. **Availability of services.** The services of the department are available without discrimination on the basis of race, color, creed, or ability to pay, and shall comply with Title VI of the Civil Rights Act of 1964."

Section 68. Section 80-2410, R.C.M. 1947, is amended to read as follows:

"80-2410. **Mental health centers established — staffing.** (1) *There are* mental health centers in Miles City and Glasgow for the care and treatment of mentally ill persons residing in Montana. Each center shall be staffed with at least one (1) of each of the following:

- (a) Psychiatrist;
  - (b) Psychologist;
  - (c) Psychiatric nurse or social worker.
- (2) Each center shall provide the following services:
- (a) Short term inpatient service;
  - (b) Partial inpatient service;
  - (c) Rehabilitation;
  - (d) Communities education."

Section 69. Section 80-2411, R.C.M. 1947, is amended to read as follows:

"80-2411. **Supervision of mental health centers.** The mental health centers shall be organized and supervised by the *department*, under rules authorized in section 80-1405."

Section 70. Section 80-2501, R.C.M. 1947, is amended to read as follows:

"80-2501. **Location and function of center.** The institution located at Lewistown is the "Montana Center for the Aged." The primary function of the center is the care and treatment of senile persons who have been admitted to *Warm Springs* state hospital and subsequently transferred to the center. As used in this *chapter* "senility" means mental illness resulting from the aging process."

Section 71. Section 80-2502, R.C.M. 1947, is amended to read as follows:

"80-2502. **Transfer of patients to and from hospitals — notice to relatives.** With the approval of the department of institutions, *the Warm Springs* state hospital may transfer a patient to the center or from the center to the state hospital. With the approval of the department the state hospital may transfer a patient residing at the center to *Galen* state hospital. Unless a medical or psychiatric emergency exists, fifteen (15) days prior to the transfer the department shall notify the patient's parent, guardian, or spouse, or if none is known, his nearest relative or friend. In the case of an emergency transfer, the department shall send notice within seventy-two (72) hours after the time of transfer."

Section 72. Section 80-2604, R.C.M. 1947, is amended to read as follows:

"80-2604. **Primary function of Boulder river school and hospital and Eastmont training center.** The primary *functions* of the Boulder river school and hospital and the Eastmont Training center *are* the care, treatment, training, education, *and necessary medical treatment* of mentally retarded persons."

Section 73. Section 80-2606, R.C.M. 1947, is amended to read as follows:

"80-2606. **Functions of department.** The department of institutions *shall*:

- (1) Take cognizance of persons affected by mental retardation in the state;
- (2) Initiate preventive mental retardation activities in the state;
- (3) Make scientific and medical investigations relative to the incidence, cause, prevention, *and* care of mental retardation;
- (4) Collect and disseminate information relating to mental retardation;
- (5) Prepare plans for the development of mental retardation services in the state;
- (6) Establish and conduct clinics in cities and towns in the state for the diagnosis, evaluation, and treatment of mental retardation;
- (7) Receive from federal and other agencies, private and public, grants of money for the development of mental retardation services within the state, and use *the money* for the purposes for which they were granted."

Section 74. Section 80-2608, R.C.M. 1947, is amended to read as follows:

**"80-2608. Administration — allocation of appropriated moneys — local services to mentally retarded.** (1) The department *may* purchase or provide services for mentally retarded persons through local nonprofit corporations. The department shall allocate to *these* local nonprofit corporations, for the purchase of services for mentally retarded persons, *the money which is* appropriated therefor. The corporations shall purchase services from public or private nonprofit sheltered workshops, day-care training centers, and other private and public facilities, universities, colleges, public schools, and preschool nurseries, *which have* approved facilities and *offer* an approved program. In case *these* approved facilities and services are not available in the community, the nonprofit corporations may develop, operate, and provide *the* services directly. Payment for *the* services by the department shall be in an amount not to exceed seventy-five per cent (75%) of the annual cost of the approved community-centered programs. Of the amounts appropriated by the legislature for the purchase of services for mentally retarded persons under the provisions of this section, a sum not to exceed ten per cent (10%) of *the* amounts appropriated may be used by the department for the purpose of purchasing *the* services without regard to matching requirements. In arriving at the cost of services, the department shall set a valuation on the personal services and materials in kind which are contributed to local agencies or institutions from which *the* services are purchased, but *the* contributions shall not exceed one-half ( $\frac{1}{2}$ ) of the required community share of the cost of services. Funds allocated to the nonprofit corporations by the department shall be used only for those services that are not a responsibility of another agency.

(2) For the purposes of allocating *money* under this section, the nonprofit corporations shall submit to the department a proposed budget. *This* budget shall include proposed expenditures, including services *these* corporations intend to purchase from various local agencies or institutions that offer services for mentally retarded persons.

(3) Governmental units, including but not limited to, counties, municipalities, school districts, or state institutions of higher learning *may*, at their own expense, purchase services or furnish money, materials, and services for mentally retarded persons, through *these* nonprofit corporations."

Section 75. Section 80-2609, R.C.M. 1947, is amended to read as follows:

**"80-2609. Factors to be considered in approving or rejecting programs.** (1) In approving or rejecting community-centered programs for the purchase of services to mentally retarded persons, the department shall consider the following factors:

(a) The adequacy and utilization of existing facilities and programs in the community, such as public and private nonprofit sheltered workshops, public school programs, preschool nurseries, and day-care centers, and universities and colleges;

(b) The adequacy of participation by state services, including but not limited to, public welfare, public health, rehabilitation, and education;

(c) General community interest and participation;

(d) The establishment of programs for the prevention of institutionalization, and habilitation when they do not already exist.

(2) The *department* shall require the following in the community administration of this program:

(a) Each community-centered program shall be under the control and direction of a board of directors or trustees of a corporation not for profit.

(b) The members of the board of directors or trustees shall be representative of, but not limited to, public, private, or voluntary agencies, including political subdivisions of *the* state, which participate in a program for mentally retarded persons in the community.

(c) The community incorporated board shall make application annually to the department to participate in the state program for mentally retarded persons, and only programs shall be approved which meet the requirements set forth in subsection (1) of this section."

Section 76. Section 80-2610, R.C.M. 1947, is amended to read as follows:

"80-2610. **Rules — other powers of director incident to administration of community-centered services.** The director of institutions *may* adopt reasonable rules to govern the administrative proceedings and procedures necessary to carry out the provisions of this act. *The* rules may be amended or revoked from time to time. The director *may* also *adopt* standards for and supervise programs supported under this act, and prescribe the form of reports, budgets, holdings of meetings, investigations, and evaluations necessarily incident to the administration of this act."

Section 77. There is a new section to be numbered 82A-801.1, R.C.M. 1947, which reads as follows:

82A-801.1. **Functions of department.** The department and its units are responsible for the administration of laws relating to institutions, including, but not limited to, laws pertaining to:

- (1) District youth guidance homes (title 10, chapter 11);
- (2) Warm Springs state hospital (title 38, chapter 1);
- (3) Examination and commitment of persons mentally deranged (title 38, chapter 2);
- (4) Patient transfers (title 38, chapter 3);
- (5) Examination of patients and voluntary admissions (title 38, chapter 4);
- (6) Convalescent leave of patients (title 38, chapter 5);
- (7) Voluntary sterilizations (title 69, chapter 64);
- (8) Juvenile facilities (title 80, chapter 14);
- (9) Institutional industries (title 80, chapter 15);
- (10) Payments for care of patients (title 80, chapter 16);
- (11) Galen state hospital (title 80, chapter 17);
- (12) Montana veterans' home (title 80, chapter 18);
- (13) State prison (title 80, chapter 19);
- (14) Montana childrens center (title 80, chapter 21);
- (15) Mountain View school and Pine Hills school (title 80, chapter 22);
- (16) Boulder river school and hospital (title 80, chapter 23);

(17) Mental hygiene services and mental health centers (title 80, chapter 24);

(18) Montana center for the aged (title 80, chapter 25);

(19) Mental retardation programs (title 80, chapter 26);

(20) Probation, parole, and clemency (title 94, chapter 98).

Section 78. Section 82A-804, R.C.M. 1947, is amended to read as follows:

**"82A-804. Board of pardons — composition — allocation — designation.** (1) *There is a board of pardons.*

(2) *The board consists of three (3) members.*

(3) The board is *allocated* to the department for administrative purposes only as prescribed in section 82A-108. However, the board may hire its own personnel, and section 82A-108(2)(d) does not apply.

(4) The board is designated as a quasi-judicial board for purposes of section 82A-112."

Section 79. Section 82A-805, R.C.M. 1947, is amended to read as follows:

**"82A-805. Board of eugenics — composition — qualifications — allocation — designation.** (1) *There is a board of eugenics.*

(2) *The board consists of seven (7) members, and one (1) ex officio member. The members are:*

(a) *Two (2) physicians licensed to practice medicine and surgery in this state to be appointed after considering the recommendation of the Montana medical association;*

(b) *One (1) lawyer licensed to practice law in this state to be appointed after considering the recommendation of the Montana bar association;*

(c) *Three (3) lay members;*

(d) *One (1) psychologist;*

(e) *The director of institutions, who is an ex officio member of the board.*

(3) The board is *allocated* to the department for administrative purposes only as prescribed in section 82A-108.

(4) The board is designated as a quasi-judicial board for purposes of section 82A-112."

Section 80. Section 82A-806, R.C.M. 1947, is amended to read as follows:

**"82A-806. Board of institutions — composition — qualifications — designation.** (1) *There is a board of institutions.*

(2) *The board consists of five (5) members. The board members shall*



*be selected so that not more than three (3) are from the same congressional district, and so that not more than three (3) are affiliated with the same political party. The members shall be qualified by aptitude, experience, and interest.*

(3) The board is *allocated* to the department for administrative purposes only as prescribed in section 82A-108.

(4) The board is designated as a quasi-judicial board for purposes of section 82A-112."

Section 81. Section 95-3204, R.C.M. 1947, is amended to read as follows:

"95-3204. **Board of pardons.** (1) *The board of pardons shall administer the executive clemency, probation and parole system, and shall endeavor to secure the effective application and improvement of that system and the laws upon which it is based.*

(2) *The board shall meet at least once each month at the state prison.*

(3) *The principal office of the board shall be in Deer Lodge."*

Section 82. Section 95-3205, R.C.M. 1947, is amended to read as follows:

"95-3205. **Definitions.** *Unless the context requires otherwise, in this act:*

(1) *"Board" means the board of pardons provided for in section 82A-804.*

(2) *"Probation" means the release by the court without imprisonment except as otherwise provided by law, of a defendant found guilty of a crime upon verdict or plea, subject to conditions imposed by the court and subject to the supervision of the board upon direction of the court.*

(3) *"Parole" means the release to the community of a prisoner by the decision of the board prior to the expiration of his term, subject to conditions imposed by the board and subject to its supervision.*

(4) *"Executive clemency" refers to the powers of the governor as provided by section 12 of article VI of the constitution of Montana."*

Section 83. Section 95-3206, R.C.M. 1947, is amended to read as follows:

"95-3206. **Orders, records, report.** *Decisions of the board shall be by majority vote. The orders of the board are not reviewable except as to compliance of terms of this act. The department of institutions shall keep a record of the board's acts and decisions available to the public. However, all social records, including the pre-sentence report, the pre-parole report and the supervision history obtained in the discharge of official duty by any member or employee of the board, shall be confidential and shall not be disclosed directly or indirectly to anyone other than the members of the board or a judge. The board or a court may in its discre-*

tion, *when* the best interest or welfare of a particular defendant or prisoner makes such action desirable or helpful, permit the inspection of the report or any parts thereof by the prisoner or his attorney."

Section 84. Section 95-3207, R.C.M. 1947, is amended to read as follows:

"95-3207. **Administrator and employees.** The board shall *appoint an administrator* of probation and parole, hereinafter referred to as the "*administrator*" who *appoints*, with the approval of the board, an assistant *administrator*, probation and parole officers, and other employees required to administer this act. The *administrator is also the* interstate compact administrator. All other officers and employees of the board shall receive compensation for their services as fixed by the board. All officers and employees of the board shall hold office at the pleasure of the board and shall perform *the* duties *which* are imposed on them by law or by the board."

Section 85. Section 95-3210, R.C.M. 1947, is amended to read as follows:

"95-3210. **Duties of the administrator.** The *administrator is the* executive officer of the board. He is responsible for *any* investigation and supervision requested by the board or the courts. *The administrator, subject to the direction and supervision of the department under section 82A-108, shall:*

(1) *Subject to the approval of the board, divide the state into districts, and assign probation and parole officers to serve in these districts and courts;*

(2) *Obtain any necessary office quarters for the staff in each district;*

(3) *Assign the secretarial, bookkeeping, and accounting work to the clerical employees, including receipt and disbursement of money;*

(4) *Direct the work of the probation and parole officers and other employees assigned to him;*

(5) *Formulate methods of investigation, supervision, record keeping, and reports;*

(6) *Conduct training courses for the staff;*

(7) *Co-operate with all agencies, public and private, which are concerned with the treatment or welfare of persons on probation or parole;*

(8) *Administer the interstate compact for the supervision of parolees and probationers."*

Section 86. Section 95-3214, R.C.M. 1947, is amended to read as follows:

"95-3214. **Parole authority and procedure.** (1) The board shall release on parole, *by appropriate order*, any person confined in the Montana state prison, except persons under sentence of death, when in its opinion there is reasonable probability that the prisoner can be released without detriment to himself or to the community, provided:

(a) That no convict serving a time sentence shall be paroled until he *has* served at least one-quarter ( $\frac{1}{4}$ ) of his full term, less good time allowances off, as provided in section 80-1905; except that any convict serving a time sentence may be paroled after he *has* served, upon his term of sentence, twelve and one-half ( $12 \frac{1}{2}$ ) years.

(b) No convict serving a life sentence shall be paroled until he *has* served twenty-five (25) years, less the good time allowances off, as provided in section 80-1905.

(2) Within two (2) months after his admission and at such intervals thereafter as it *determines*, the board shall consider all pertinent information regarding each prisoner, including the circumstances of his offense, his previous social history and criminal record, his conduct, employment, and attitude in prison, and the reports of *and* physical and mental examinations *which* have been made.

(3) Before ordering the parole of any prisoner, the board shall interview him. A parole shall be ordered only for the best interest of society, not as an award of clemency *or* a reduction of sentence or pardon. A prisoner shall be placed on parole only when the board believes that he is able and willing to fulfill the obligations of a law-abiding citizen. Every prisoner while on parole shall remain in the legal custody of the institution from which he was released, but shall be subject to the orders of the board.

(4) The board may adopt other rules it *considers* proper or necessary, with respect to the eligibility of prisoners for parole, *and* the conduct of parole hearings or conditions to be imposed upon parolees. *When* an order for parole is issued it shall recite the conditions thereof."

Section 87. Section 95-3215, R.C.M. 1947, is amended to read as follows:

"95-3215. **Conditional release.** A prisoner *on parole who has* served one-fourth ( $\frac{1}{4}$ ) of his term or terms, less good time allowances *is considered* released on parole until the expiration of the maximum term or terms for which he was sentenced, less good time allowances as provided in section 80-1905."

Section 88. Section 95-505, R.C.M. 1947, is amended to read as follows:

"95-505. **Psychiatric examination of defendant with respect to mental disease or defect.** (1) *When* the defendant has filed a notice of intention to rely on the defense of mental disease or defect excluding responsibility, or there is reason to doubt his fitness to proceed, or reason to believe that mental disease or defect of the defendant will otherwise become an issue in the cause, the court shall appoint at least one (1) qualified psychiatrist or shall request the superintendent of *Warm Springs* state hospital to designate at least one (1) qualified psychiatrist, which designation may be or include himself, to examine and report upon the mental condition of the defendant. The court may order the defendant to be committed to a hospital or other suitable facility for the purpose of the examination for a period of not exceeding sixty (60) days or such

longer period as the court determines to be necessary for the purpose, and may direct that a qualified psychiatrist retained by the defendant be permitted to witness and participate in the examination.

(2) In *the* examination any method may be employed which is accepted by the medical profession for the examination of those alleged to be suffering from mental disease or defect.

(3) The report of the examination shall include the following:

(a) A description of the nature of the examination;

(b) A diagnosis of the mental condition of the defendant;

(c) If the defendant suffers from a mental disease or defect, an opinion as to his capacity to understand the proceedings against him and to assist in his own defense;

(d) When a notice of intention to rely on the defense of irresponsibility has been filed, an opinion as to the ability of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law at the time of the criminal conduct charged; and

(e) When directed by the court, an opinion as to the capacity of the defendant to have a particular state of mind which is an element of the offense charged.

(4) If the examination cannot be conducted by reason of the unwillingness of the defendant to participate therein, the report shall so state and shall include, if possible, an opinion as to whether *the* unwillingness of the defendant was the result of mental disease or defect.

(5) The report of the examination shall be filed (in triplicate) with the clerk of court, who shall *deliver copies* to the county attorney and to counsel for the defendant."

Section 89. Section 95-506, R.C.M. 1947, is amended to read as follows:

"95-506. Determination of fitness to proceed — effect of finding of unfitness — proceedings if fitness is regained. (1) When the defendant's fitness to proceed is drawn in question, the issue shall be determined by the court. If neither the county attorney nor counsel for the defendant contests the finding of the report filed *under* section 95-505, the court may make the determination on the basis of *the* report. If the finding is contested, the court shall hold a hearing on the issue. If the report is received in evidence upon *the* hearing, the parties have the right to summon and cross-examine the psychiatrists who joined in the report and to offer evidence upon the issue.

(2) If the court determines that the defendant lacks fitness to proceed, the proceeding against him shall be suspended, except as provided in subsection (3) of this section, and the court shall commit him to the custody of the superintendent of *Warm Springs* state hospital, to be placed in an appropriate institution of the department of institutions for so long as *the* unfitness *endures*. When the court, on its own motion or upon the

application of the superintendent of *Warm Springs* state hospital, or the county attorney, or the defendant or his legal representative, determines, after a hearing if a hearing is requested, that the defendant has regained fitness to proceed, the proceeding shall be resumed. If, however, the court is of the view that so much time has elapsed since the commitment of the defendant that it would be unjust to resume the criminal proceedings, the court may dismiss the charge and may order the defendant to be discharged, or, subject to the law governing the civil commitment of persons suffering from mental disease or defect, order the defendant committed to an appropriate institution of the department of institutions.

(3) The fact that the defendant is unfit to proceed does not preclude any legal objection to the prosecution which is susceptible to fair determination prior to trial and without the personal participation of the defendant.

(4) The expenses of sending the defendant to the custody of the superintendent of the Montana state hospital, to be placed in an appropriate institution of the state department of institutions, of keeping him there, and of bringing him back, are in the first instance chargeable to the county in which the indictment was found, or the information filed; but the county may recover them from the estate of the defendant, if he has any, or from a town, city or county bound to provide for and maintain him elsewhere."

Section 90. Section 95-507, R.C.M. 1947, is amended to read as follows:

**"95-507. Determination of irresponsibility on basis of report — access to defendant by psychiatrist of his own choice — form of expert testimony when issue of responsibility is tried.** (1) If the report filed *under* section 95-505 finds that the defendant at the time of the criminal conduct charged suffered from a mental disease or defect which rendered him unable to appreciate the criminality of his conduct or to conform his conduct to the requirements of law, and the court, after a hearing if a hearing is requested by the attorney prosecuting or the defendant, is satisfied that *the* mental disease or defect was sufficient to exclude responsibility, the court on motion of the defendant shall enter judgment of acquittal on the ground of mental disease or defect excluding responsibility.

(2) When either the defendant or the state wishes the defendant to be examined by a qualified psychiatrist or other expert, selected by the one proposing the examination, *the* examiner shall be permitted to have reasonable access to the defendant for the purpose of *the* examination.

(3) Upon the trial, any psychiatrist who reported *under* section 95-505 may be called as a witness by the prosecution or by the defense. If the issue is being tried before a jury, the jury shall not be informed that the psychiatrist was designated by the court or by the superintendent of *Warm Springs* state hospital. Both the prosecution and the defense may summon any other qualified psychiatrist or other expert to testify, but no one who has not examined the defendant *is* competent to testify to an expert opinion with respect to the mental condition or responsibility

of the defendant, as distinguished from the validity of the procedure followed by, or the general scientific propositions stated by another witness.

(4) When a psychiatrist or other expert who has examined the defendant testifies concerning his mental condition, he *may* make a statement as to the nature of his examination, his diagnosis of the mental condition of the defendant at the time of the commission of the offense charged, and his opinion as to the ability of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law or to have a particular state of mind which is an element of the offense charged. He *may* make any explanation reasonably serving to clarify his diagnosis and opinion and may be cross-examined as to any matter bearing on his competency or credibility or the validity of his diagnosis or opinion."

Section 91. Section 95-508, R.C.M. 1947, is amended to read as follows:

**"95-508. Legal effect of acquittal on the ground of mental disease or defect excluding responsibility — commitment — release or discharge.** (1) When a defendant is acquitted on the ground of mental disease or defect excluding responsibility, the court shall order him committed to the custody of the superintendent of *Warm Springs* state hospital to be placed in an appropriate institution for custody, care, and treatment. A person so confined shall have a hearing, unless waived, within fifty (50) days of his confinement to determine his present mental condition and whether he may be discharged or released without danger to others. The court shall cause notice of the hearing to be served upon the person, his counsel and the prosecuting attorney. Such a hearing shall be deemed a civil proceeding and the burden shall be upon the defendant to prove by a preponderance of the evidence that he may be safely released. According to the determination of the court upon the hearing, the defendant shall be discharged or released on such conditions as the court determines to be necessary, or shall be committed to the custody of the superintendent of the Montana state hospital to be placed in an appropriate institution for custody, care and treatment.

(2) If the superintendent of *Warm Springs* state hospital believes that a person committed to his custody, *under* subsection (1) of this section, may be discharged or released on condition without danger to himself or others, he shall make application for the discharge or release of *the* person in a report to the court by which *the* person was committed, and shall *send* a copy of *the* application and report to the county attorney of the county from which the defendant was committed. The court shall *then* appoint at least two (2) qualified psychiatrists to examine *the* person and to report within sixty (60) days, or *a* longer period *which* the court determines to be necessary for the purpose, their opinion as to his mental condition. To facilitate *the* examinations and the proceedings thereon, the court may *have the* person confined in any institution located near the place where the court sits, which may hereafter be designated by the superintendent of *Warm Springs* state hospital as suitable for the temporary detention of irresponsible persons.

(3) If the court is satisfied by the report filed *under* subsection (2) of

this section, and *the* testimony of the reporting psychiatrists *which* the court *considers* necessary that the committed person may be discharged or released on condition without danger to himself or others, the court shall order his discharge or his release on conditions *which* the court determines to be necessary. If the court is not satisfied, it shall promptly order a hearing to determine whether *the* person may safely be discharged or released. A hearing *is considered* a civil proceeding and the burden *is* upon the committed person to prove by a preponderance of the evidence that he may safely be discharged or released. According to the determination of the court upon the hearing, the committed person shall *then* be discharged or released on conditions *which* the court determines to be necessary, or shall be recommitted to the custody of the superintendent of Warm Springs state hospital, subject to discharge or release only in accordance with the procedure prescribed above in subsections (2) and (3).

(4) If, within five (5) years after the conditional release of a committed person, the court *determines*, after hearing evidence, that the conditions of release have not been fulfilled and that for the safety of *the* person or for the safety of others his conditional release should be revoked, the court shall *immediately* order him to be recommitted to the superintendent of Warm Springs state hospital, subject to discharge or release only in accordance with the procedure prescribed above in subsections (2) and (3).

(5) A committed person may make application for his discharge or release to the court by which he was committed, and the procedure to be followed upon *the* application *is* the same as that prescribed above in the case of an application by the superintendent of Warm Springs state hospital. However, *an* application by a committed person need *not* be considered until he has been confined for a period of not less than six (6) months from the date of the order of commitment, and if the determination of the court *is* adverse to the application, *the* person shall not be permitted to file a further application until one (1) year has elapsed from the date of any preceding hearing on an application for his release or discharge."

Section 92. Section 95-2218, R.C.M. 1947, is amended to read as follows:

"95-2218. **Definitions.** *Unless the context requires otherwise, in this act:*

(1) "Board" means the state board of pardons *provided for in section 82A-804*;

(2) "State prison" means the Montana state prison at Deer Lodge;

(3) "Prisoner" means a person sentenced by a district court to a term of confinement in the state prison;

(4) "Sheriff" means any county sheriff including all deputies or other persons working under his direction or guidance;

(5) "Jail" means any county jail;

(6) "Warden" means the *warden* of the state prison."

Section 93. Section 95-2226, R.C.M. 1947, is amended to read as follows:

**"95-2226. Sheriff's responsibility — cancellation or revocation of furlough.** (1) The sheriff of the county to which the prisoner has been released *is* responsible for the activities of the prisoner according to the rules approved by the board. The sheriff shall keep the warden informed *of the prisoner's activities*.

(2) If any prisoner released from actual prison confinement under the furlough program *fails* to comply with the rules of the furlough program, *the* furlough shall be canceled and *the* prisoner shall be returned to prison to complete his sentence. A prisoner *may not* be returned to prison to complete his sentence without first being charged with a violation of the rules of the furlough program in the district court of the county in which *the* violation took place. *The* prisoner entitled to have counsel appointed to represent him at *the* hearing. *However*, if *the* prisoner, *except where* disabled from working *because of a* temporary illness, is unemployed for a period of thirty (30) days or more (after his availability for employment is reported in writing by the sheriff of the county to which *the* prisoner is released, to the *department of labor and industry's* office serving *the* area, and to the union to which *the* prisoner belongs, if any) the warden, upon request of *the* sheriff and upon a showing by the sheriff of *the* county in the district court *either that: (a) the* employee has been so unemployed, *(b) the* prisoner has become so disabled that he is unemployable, or *(c) the* prisoner is on an education furlough and *the* prisoner has demonstrated for a period of six (6) weeks or more that he is unable to benefit from *the* schooling or training, shall revoke *the* furlough and *the* prisoner shall be returned to the prison."

Section 94. Section 95-2305, R.C.M. 1947, is amended to read as follows:

**"95-2305. Proceedings upon finding of lack of mental fitness.** If it is found that defendant is mentally fit as provided in section 95-2304, the sheriff must execute the judgment; but if it is found that he lacks fitness, the execution of judgment must be suspended and the court shall commit him to the custody of the superintendent of *Warm Springs* state hospital, to be placed in an appropriate institution of the department of institutions for so long as *the* lack of fitness *endures*. When the court, on its own motion or upon application of the superintendent of *Warm Springs* state hospital, or the county prosecuting officer, or the defendant or his legal representative, determines after a hearing if a hearing is requested, that the defendant has regained fitness to proceed, the sheriff shall be directed by the court to carry out the execution. If, however, the court is of the view that so much time has elapsed since the commitment of the defendant, that it would be unjust to proceed with execution of the sentence, the court may suspend the execution of the sentence and may order the defendant to be discharged."

Section 95. Section 95-2311, R.C.M. 1947, is amended to read as follows:

**"95-2311. Hearings requested by other states — power of board**



**of pardons and department of institutions to hold.** The board of pardons and the department of institutions *shall* hold such hearings as may be requested by any other party state pursuant to section 95-2308, subsection 4 (f) of the Western Interstate Corrections Compact."

Section 96. Sections 38-108(1), 38-117, 38-119, 38-406.1, 69-6402, 80-1404, 80-1407 through 80-1409, 80-2207, 80-2311, 80-2601 through 80-2603, 82-903, 82A-802, 82A-803, 82A-807, 95-3208, 94-9851, R.C.M. 1947, are repealed.

Approved March 11, 1974.

## CHAPTER NO. 121

### AN ACT FOR THE CODIFICATION AND GENERAL REVISION OF THE LAWS RELATING TO THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 10-701, R.C.M. 1947, is amended to read as follows:

"10-701. **Definitions.** *As used in this act:*

(1) "*Person*" includes any individual, partnership, voluntary association, or corporation.

(2) "*Agency*" includes a person not related by blood or marriage to a minor child to be adopted. This act *does not* apply to the Montana Children's Center.

(3) "*State department*" means the department of social and rehabilitation services provided for in Title 82A, chapter 19."

Section 2. Section 10-801, R.C.M. 1947, is amended to read as follows:

"10-801. **Definitions.** *In this act:*

(1) "*Child*" means a person under twelve (12) years of age;

(2) "*Day care facility*" means a person, association, or place, incorporated or unincorporated, that receives for care during the day or part of the day three (3) or more children of separate families and continues this type of care for five (5) or more consecutive weeks. It *does not include* a person who limits care to children who are related to him by blood or marriage or under his legal guardianship, and all group facilities established chiefly for educational purposes;

(3) "*Day care center*" means a day care facility that receives seven (7) or more children for care for five (5) or more hours of the day for five (5) or more consecutive weeks. It may include facilities known as child care centers, nursery schools, day nurseries, and centers for the mentally retarded;

(4) "*State department*" or "*department*" means the department of social and rehabilitation services provided for in Title 82A, chapter 19."

Section 3. Section 10-803, R.C.M. 1947, is amended to read as follows:

"10-803. **Standards for child care.** The state *department* shall prescribe and publish minimum standards for a license. In developing these standards the department shall seek the advice and assistance of the *department of health and environmental sciences*, and superintendent of public instruction, representatives of day care facilities, specialists in child care, and representatives of parent groups who use the services of day care facilities. The standards may pertain to:

(1) *Character*, suitability, and qualifications of *an* applicant, and other persons directly responsible for the care of children;

(2) *The* number of individuals or staff required for adequate supervision and care of children in day care centers;

(3) *Child* care programs and practices essential to the protection of health, safety, development, and well-being of children;

(4) *Adequate* and appropriate admission policies;

(5) *Adequacy* of physical facilities and equipment;

(6) *General* financial ability and competence of *an* applicant to provide necessary care for children and maintain prescribed standards."

Section 4. Section 10-804, R.C.M. 1947, is amended to read as follows:

"10-804. **Fire safety — certification required.** The *department of justice* shall adopt and enforce rules for the protection of children in care facilities from fire hazards, and arrange for such inspections and investigations as *it considers* necessary. Each applicant for a license to operate a day care center shall submit to the department of *social and rehabilitation services* a certificate of approval indicating that fire safety rules have been met before a license can be issued. *In* all non-fire-resistant homes two (2) stories or more in height with ten (10) or more children, automatic sprinkler systems acceptable to the *department of justice* shall be installed, with *the department of justice* to issue for the information and use of the *department of social and rehabilitation services*, certificates of compliance with fire *rules* and standards applicable to the facilities."

Section 5. Section 10-805, R.C.M. 1947, is amended to read as follows:

"10-805. **Health protection — certificate required by department of health and environmental sciences.** The *department of health and environmental sciences* shall adopt rules for the protection of children in day care centers from the health hazards of overcrowding, food preparation, and communicable diseases and arrange for *any* inspections and investigations it *considers* necessary. Each applicant for a license to operate a day care center shall submit to the *department of social and rehabilitation services* a certificate of approval that *the department of health and environmental sciences* rules have been met before a license can be issued."

Section 6. Section 10-806, R.C.M. 1947, is amended to read as follows:

"10-806. **Licenses issued by the state department — rules — minimum requirements of licensees.** (1) The state *department* shall issue licenses to persons to receive into a day care facility, children for care during the day or part of a day. Application for a license shall be made to the state *department* through the county department of public welfare in the county in which the applicant lives, on forms prescribed by the state *department*. Upon receipt of the application, the county welfare department, shall, within a reasonable time, *investigate* to determine whether a license should be granted.

(2) The state *department* shall prescribe the conditions upon which licenses are issued, and *shall adopt* rules for the conduct of *the* facilities *which* are consistent with the welfare of the children received. *The state department* must issue licenses to agencies meeting the following minimum requirements;

(a) *The* applicant, his employees, and all those persons who will come in direct contact with the children *are* of good moral character

(b) *The* staff of the facility *is* sufficient in number to provide adequate supervision and care of the children admitted

(c) *Essential* programs and practices carried on by the facility staff *are* developed and carried out with due regard for the protection of the health, safety, development, and well-being of the children

(d) *Applicant* and staff *are* qualified by practical experience or education or training, to give good care and treatment to the children

(e) *Physical* facilities *are* of a kind that can meet the minimum state standards to provide for the protection of the children from fire and health hazards

(f) *Intake* records *are* kept on each child admitted for care

(g) *The* applicant and staff *limits* admissions to the maximum number indicated on the current license

(h) *The* applicant will arrange for the necessary precautions to guard against communicable diseases

(i) *Public liability insurance and fire insurance is currently in force for the protection of the operator, his staff, and the facility."*

Section 7. Section 10-807, R.C.M. 1947, is amended to read as follows:

"10-807. **Provisional license.** The *department of social and rehabilitation services* may, in its discretion, issue a provisional license for a period of not more than six (6) months if it finds that a substandard day care facility is attempting to meet the minimum standards. The requirement that a day care center shall be certified by the *department of justice* and the *department of health and environmental sciences* may not be waived."

Section 8. Section 10-810, R.C.M. 1947, is amended to read as follows:

"10-810. **License — denial — nonrenewal — revocation — hearing.** The *department*, after notice and opportunity for hearing to the appli-

cant or licensee, *may* deny, suspend, or revoke a license in any case in which it finds that there has been a substantial failure to comply with the requirements established under this law."

Section 9. Section 10-811, R.C.M. 1947, is amended to read as follows:

"10-811. **Violations.** *When the department is advised or has reason to believe that a person, group of persons, or corporation is operating a child care facility without a license, it shall make an investigation to ascertain the facts. If it finds that the child care facility is being, or has been, operated without a license, it may report the results of its investigation to the attorney general or the county attorney of the county where the child care facility is being operated for prosecution and request that an injunction be issued against the facility until a license is issued. In addition, the state department may institute any action necessary to enforce compliance with this act or any order, rule, or regulation of the state department under this act, or to obtain a judicial interpretation of any of the foregoing. The department may institute action by its own attorney or counsel, or may call upon any county attorney to represent it in the district court of the county in which the action is taken, or the attorney general to represent it on appeal to the supreme court of Montana, or it may associate its own counsel with either in any court.*"

Section 10. Section 41-801, R.C.M. 1947, is renumbered Section 71-1801, and is amended to read as follows:

"71-1801. **Definitions.** As used in this chapter:

(1) "Employment handicap" means a physical or mental condition which constitutes, contributes to or if not corrected, will probably result in an obstruction to occupational performance;

(2) "Disabled individual" means a person with an impairment of a physical or mental nature that can be diagnosed by a physician or appropriate specialist;

(3) "Vocational rehabilitation" and "vocational rehabilitation services" mean services provided directly or through public or private instrumentalities, found by the *state department of social and rehabilitation services* to be necessary to compensate a disabled individual for his employment handicap, and to enable him in so far as possible to engage in a remunerative occupation including, but not limited to, medical and vocational diagnosis, vocational guidance, counseling and placement, rehabilitation training, physical restoration, transportation, occupational licenses, customary occupational tools and equipment, maintenance, and training books and materials, facilities for groups of handicapped, service to family members and follow-up service;

(4) "Rehabilitation training" means all necessary training provided to a disabled individual to compensate for his employment handicap including, but not limited to, manual, preconditioning, prevoctational, vocational, and supplementary training and training provided for the purpose of achieving broader or more remunerative skills and capacities;

(5) "Physical restoration" means any medical, surgical or therapeutic treatment necessary to correct or substantially reduce a disabled indi-

vidual's employment handicap within a reasonable length of time including, but not limited to, medical, psychiatric, dental and surgical treatment, nursing services, hospital care, convalescent home care, drugs, medical and surgical supplies, and prosthetic appliances, but excluding curative treatment for acute or transitory conditions, (except medical care for acute conditions during the course of a rehabilitation plan which, if not corrected, would constitute a hazard to plan completion);

(6) "Prosthetic appliance" means *an* artificial device necessary to support or take the place of a part of the body or to increase the acuity of a sense organ;

(7) "Occupational licenses" means *a* license, permit or other written authority required by any governmental unit to be obtained in order to engage in an occupation;

(8) "Maintenance" means money payments not exceeding the estimated cost of subsistence during vocational rehabilitation;

(9) "Regulations" means regulations made by the state *department*;

(10) "Rehabilitation plan" means a plan for providing services that will render a disabled individual employable and is jointly developed by the client and *the state department*."

Section 11. Section 41-803, R.C.M. 1947, is renumbered Section 71-1802, and is amended to read as follows:

**"71-1802. State department duties. *The state department:***

(1) *Shall adopt rules governing personnel standards, the protection of records and confidential information, the manner and form of filing applications, eligibility, and investigation and determination thereof, for vocational rehabilitation services, procedures for fair hearings and any other rules necessary to carry out this act;*

(2) *Except as otherwise provided by law, shall provide vocational rehabilitation services to eligible disabled individuals;*

(3) *Shall take any other action it considers necessary or appropriate to carry out the purposes of this act;*

(4) *May cooperate with other agencies and institutions, both public and private, in providing for vocational rehabilitation of disabled individuals, in studying the problems involved in vocational rehabilitation, and establishing, developing, and providing necessary programs, facilities, and services;*

(5) *May conduct research and compile statistics relating to the vocational rehabilitation of disabled individuals;*

(6) *May accept and use gifts to carry out this chapter. Gifts made under conditions which the department considers proper and consistent with this chapter may be accepted, and shall be held, invested, reinvested, and used in accordance with the conditions of the gift."*

Section 12. Section 41-805, R.C.M. 1947, is renumbered Section 71-1803, and is amended to read as follows:

**"71-1803. Cooperation with federal government.** The *state department* shall *cooperate*, pursuant to agreements, with the federal government in carrying out the purposes of any federal statutes, pertaining to rehabilitation and *may* adopt such methods of administration as are found by the federal government to be necessary for the proper and efficient operation of such agreements or plans for rehabilitation and to comply with such conditions as may be necessary to secure the full benefits of such federal statutes."

Section 13. Section 41-806, R.C.M. 1947, is renumbered Section 71-1804, and is amended to read as follows:

**"71-1804. Receipt and disbursement of rehabilitation funds.** The state treasurer is the custodian of all funds received from the federal government for the purpose of carrying out any federal statutes pertaining to rehabilitation. The state treasurer shall make disbursements from such funds and from all state funds available for rehabilitation purposes upon certification *of the state department*."

Section 14. Section 41-808, R.C.M. 1947, is renumbered Section 71-1805, and is amended to read as follows:

**"71-1805. Eligibility for vocational rehabilitation.** Vocational rehabilitation services shall be provided to any disabled individual (1) who is in the state at the time of filing his application therefor and whose vocational rehabilitation, the *state department* determines after full investigation, can be satisfactorily achieved, or (2) who is eligible therefor under the terms of an agreement with another state or with the federal government. *Except* as otherwise provided by law or as specified in any agreement with the federal government with respect to classes of individuals certified to the *state department*, the following rehabilitation services shall be provided at public cost only to disabled individuals found to require financial assistance with respect thereto:

- (a) Physical restoration;
- (b) Transportation not provided to determine the eligibility of the individual for vocational rehabilitation services and the nature and extent of the services necessary;
- (c) Occupational licenses;
- (d) Customary occupational tools and equipment;
- (e) Maintenance;
- (f) Training books and materials."

Section 15. Section 41-810, R.C.M. 1947, is renumbered Section 71-1806, and is amended to read as follows:

**"71-1806. Hearings.** An individual applying for or receiving vocational rehabilitation who is aggrieved by any action or inaction of the *state department* is entitled, in accordance with regulations, to a fair hearing by the board of *social and rehabilitation appeals*."

Section 16. Section 41-812, R.C.M. 1947, is renumbered Section 71-1807, and is amended to read as follows:

**"71-1807. Limitation of political activity.** *An officer or employee engaged in the administration of the vocational rehabilitation program may not use his official authority or influence or permit the use of the vocational rehabilitation program for the purpose of interfering with an election or affecting the result thereof or for any partisan political purpose. Any such officer or employee may not take any active part in the management of political campaigns or participate in any political activity, however he may vote as he pleases and express his opinions as a citizen on all subjects. Any such officer or employee may not solicit or receive, nor may any such officer or employee be obliged to contribute or render, any service, assistance, subscription, assessment, or contribution for any political purpose. An officer or employee violating this provision is subject to discharge or suspension."*

Section 17. Section 41-813, R.C.M. 1947, is renumbered Section 71-1808, and is amended to read as follows:

**"71-1808. Separability.** If any provision of this *chapter*, or the application thereof to any person or circumstance, is held invalid, the remainder of the *chapter*, and the application of the provision to other persons or circumstances is not affected thereby."

Section 18. Section 61-213, R.C.M. 1947, is amended to read as follows:

**"61-213. Confidential nature of record and proceedings.** (1) Unless the court shall otherwise order, all hearings held in proceedings under this act shall be confidential and shall be held in closed court without admittance of any person other than interested parties and their counsel.

(2) All papers and records pertaining to the adoption shall be kept as a permanent record of the court and withheld from inspection. No person shall have access to such records except on order of the judge of the court in which the decree of adoption was entered for good cause shown.

(3) All files and records pertaining to said adoption proceedings in the county departments of public welfare, *the state department of social and rehabilitation services* or any authorized agencies shall be confidential and withheld from inspection except upon order of court for good cause shown."

Section 19. There is a new section to be numbered 71-201.1, R.C.M. 1947, which reads as follows:

**71-201.1. Definition.** Unless the context requires otherwise, in Title 71:

(1) "State department" means the department of social and rehabilitation services provided for in Title 82A, chapter 19.

(2) "Public assistance" or "assistance" means any type of monetary or other assistance furnished under this title to a person by a state or county agency, regardless of the original source of the assistance.

Section 20. Section 71-210, R.C.M. 1947, is amended to read as follows:

"71-210. **Authority and activities of the state department.** (1) The state department *has* authority over and administration or supervision of all the purposes and operations as set forth under *Title 71*. The state department shall:

(a) Administer or supervise all forms of public assistance, child protection and child welfare, including the provision of medical care payments in behalf of recipients of public assistance;

(b) Administer or supervise all child welfare activities, including importation and exportation of children; licensing and supervising of private and local child-caring agencies; the care of dependent, neglected and delinquent children in foster family homes, especially children placed for adoption or those of illegitimate birth;

(c) Give consultant service to private institutions providing care for the needy, indigent, handicapped or dependent adults;

(d) Develop and *cooperate* with other state agencies provisions for services to the blind, including the prevention of blindness, the location of blind persons, medical services for eye conditions and vocational guidance and training of the blind;

(e) Provide services in respect to organization and *supervise* county departments of *public welfare and county boards of public welfare* in the administration of public welfare functions, *and for efficiency and economy*;

(f) Assist and *cooperate* with other state and federal departments, bureaus, agencies and institutions, when so requested, by performing services in conformity with the purposes of this act.

(g) *Administer and supervise all federal funds allocated to this state and all state funds appropriated to this state department for the activities set forth in Title 71. The state department shall do all things necessary, in conformity with federal and state law, for the proper fulfillment of the purposes set forth in Title 71.*

(2) *The state department may:*

(a) *Purchase, exchange, condemn, or receive by gift, either real or personal property which is necessary to carry out its functions under Title 71. Title to property obtained under this subsection shall be taken in the name of the state of Montana, for the use and benefit of the state department.*

(b) *Contract with the federal government to carry out its functions under Title 71. The state department may do all things necessary in order to avail itself of federal aid and assistance."*

Section 21. There is a new section to be numbered 71-210.1, R.C.M. 1947, which reads as follows:

71-210.1. **Public assistance personnel.** The state department shall (1) maintain a merit system pertaining to qualifications for appointment, terms of office, annual merit rating, releases, promotions, and salary schedules for all public assistance personnel. The state department shall



have examinations held from time to time throughout the state to establish and furnish to county departments lists, in order of merit, of persons eligible for appointment. Personnel standards shall conform as far as possible with general standards established or required by the federal government.

(2) Develop policies relating to educational leave of employees, and to staff development needs.

(3) Supervise the appointment, dismissal, and entire status of the public assistance personnel attached to county boards in accordance with the merit system. All public assistance personnel shall be residents of this state, unless it is impossible to find residents of this state possessing qualifications required by the merit system. If possible, county assistance personnel shall be residents of the county in which they work.

Section 22. Section 71-218, R.C.M. 1947, is amended to read as follows:

"71-218. **Department — functions.** County departments *are* under the supervision of *the state department* and subject to audit by the state department."

Section 23. Section 71-222, R.C.M. 1947, is amended to read as follows:

"71-222. **Millage taxes to be levied — expenditures — budgets.** (1) *The* board of county commissioners in each county *shall* levy seventeen (17) mills for the county poor fund as provided by law, or so much thereof as may be necessary. The board shall budget and expend so much of the funds in the county poor fund for all purposes of this act as will enable the county welfare department to pay the general relief activities of the county and to reimburse the state department for the county's proportionate share of the administrative costs of the county welfare department and of all public assistance and its proportionate share of any other welfare activity that may be carried on jointly by the state and the county.

(2) The amounts set up in the budget for the reimbursements to the state department shall be sufficient to make all of these reimbursements in full. The budget shall make separate provision for each one of these public assistance activities, and proper accounts shall be established for the funds for all such activities.

(3) As soon as the preliminary budget provided for in section 16-1903 has been agreed upon, a copy thereof shall without delay be mailed to the state *department*, and at any time before the final adoption of the budget, *the department shall* make such recommendations with regard to changes in any part of the budget relating to the county poor fund as *considered* necessary in order to enable the county to discharge its obligations under the Public Welfare Act.

(4) The state *department* shall promptly examine the preliminary budget in order to ascertain if the amounts provided for reimbursements to the state department are likely to be sufficient, and shall notify the county clerk of his findings. *The* board *shall* make such changes in the amounts provided for reimbursements, if any are required, that the county will be able to make the reimbursements in full.

(5) The board of county commissioners *may* not make any transfer from the amounts budgeted for reimbursing the state department without having first obtained a statement in writing from the state *department* to the effect that the amount to be transferred will not be required during the fiscal year for the purposes for which the amounts were provided in the budget.

(6) No part of the county poor fund, irrespective of the source of any part thereof, *may* be used directly or indirectly for the erection or improvement of any county building so long as the fund is needed for general relief expenditures by the county or is needed for paying the county's proportionate share of public assistance, or its proportionate share of any other welfare activity that may be carried on jointly by the state and the county. *Expenditures* for improvement of any county buildings used directly for care of the poor may be made out of any moneys in the county poor fund, whether such moneys are produced by seventeen (17) mill levy provided for in paragraph one (1) of this section or from any additional levy authorized or to be authorized by law. Such expenditure shall be authorized only when any county building used for the care of the poor must be improved in order to meet legal standards required for such buildings by the *department* of health and *environmental sciences*, and, when such expenditure has been approved by the state department."

Section 24. Section 71-223, R.C.M. 1947, is amended to read as follows:

"71-223. (1) **Right of appeal.** If an application for assistance under Title 71, *except for benefits under chapter 19 pertaining to veterans' welfare*, is not acted upon promptly or if a decision is made with which the applicant or recipient is not satisfied, he may appeal to the board of *social and rehabilitation appeals* for a fair hearing by addressing a request for a hearing to the state department. The board of *social and rehabilitation appeals* shall, upon receipt of a request for a hearing, give the applicant or recipient prompt notice and opportunity for a fair hearing. A county welfare board *which is involved in a grievance* shall be represented at such a hearing.

(2) The state *department* may, upon its own motion, review any decision of a county welfare board, and may consider any application upon which a decision has not been made by the county board within a reasonable time from the filing thereof. The state *department* may *have an additional investigation made*, and shall make a decision as to the granting of assistance and the amount of assistance to be granted the applicant as in its opinion is justified and in conformity with the provisions of this act.

(3) *If the state department reviews a county decision on its own motion*, applicants or recipients affected by the decisions of the state *department* shall, upon request, be given reasonable notice and an opportunity for a fair hearing by the board of *social and rehabilitation appeals*.

(4) All decisions of the state *department* or the board of *social and rehabilitation appeals* are final and are binding and shall be complied with by the county department."

Section 25. Section 71-228, R.C.M. 1947, is amended to read as follows:

"71-228. **Revocation of assistance.** If the county or state departments have reason to believe, by reason of a complaint or otherwise, that public assistance under *Title 71* has been improperly granted, it shall *have* an investigation made. If it appears as a result of *an* investigation that the assistance was improperly granted, the state department shall notify the county department that no further payments shall be authorized for such recipient. The right of appeal is granted recipients whose assistance has been revoked."

Section 26. Section 71-229, R.C.M. 1947, is amended to read as follows:

"71-229. **Assistance not assignable nor subject to legal process.** *Except as otherwise provided in Title 71, assistance granted under Title 71 is not transferable or assignable, at law or in equity, and none of the money paid or payable under Title 71 is subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.*"

Section 27. Section 71-306, R.C.M. 1947, is amended to read as follows:

"71-306. **Right of hearing.** Individuals or committees with complaints or grievances *concerning assistance may* present their complaints or grievances to either the county board or the state department and due consideration shall be given all proven facts presented by *the* individuals or committees. *The* county board or the state department shall *take action* to relieve situations *brought to their attention under this section* to the extent of funds available."

Section 28. Section 71-307, R.C.M. 1947, is amended to read as follows:

"71-307. **Relief by check or disbursing orders.** (1) All relief disbursements by county departments of public welfare shall be by warrant or check. *However*, if the county welfare department finds that a recipient is in the habit of dissipating relief allowances instead of using them for the purposes intended, or that for any other reason it is better for the recipient and his family to receive the allowance through disbursing orders, then disbursing orders shall be used instead of cash payments; but all such disbursing orders must be written in such form that the goods and merchandise to be provided may be furnished by any regular dealer in such goods and merchandise within the county. *If* the county has work available which a recipient of general relief is capable of performing, then the county department of public welfare may require the recipient to perform *the* work at the prevailing rate of wages paid by that county for similar work to be paid from the county poor fund in place of granting him general relief.

(2) The county department of public welfare shall provide coverage under the Workmen's Compensation Act for those recipients of general relief working under the provisions hereof, and *may* enter into such

agreements with the *division of workmen's compensation of the department of labor and industry* as may be necessary to carry out the provisions of this section.

(3) Any recipient of general relief who is subject to the provisions of this section and who without cause refuses to perform work assigned to him as herein provided, shall lose his eligibility for general relief for one (1) week for each refusal."

Section 29. Section 71-308, R.C.M. 1947, is amended to read as follows:

"71-308. **Medical aid and hospitalization.** (1) Medical aid and hospitalization for persons unable to provide such necessities for themselves are the legal and financial duty and responsibility of the board of county commissioners, except as otherwise provided in other parts of this act, payable from the county poor fund. *The* board of county commissioners *shall* make provisions for competent and skilled medical or surgical services as approved by the *department of health and environmental sciences* or the state medical association, or in the case of osteopathic practitioners by the state osteopathic association or chiropractors by the state chiropractic association, or optometrical services as approved by the Montana optometric association, and dental services as approved by the dental association. "Medical" or "medicine" as used in this act refers to the healing art as practiced by licensed practitioners.

(2) In automobile accident cases wherein transients traveling through *this* state are injured, medical aid and hospitalization shall be paid for by the county wherein the accident occurred and the *state* department shall reimburse each county in full upon proper claim being made to the *state* department. *In* all other accident cases wherein such transients are injured, medical aid and hospitalization shall be paid for by the county wherein the accident occurred and the *state* department shall reimburse the county for one-half ( $\frac{1}{2}$ ) of the medical aid and hospitalization paid by the county, upon proper claim being made to the *state* department.

(3) The board, in arranging for medical care for those unable to provide it for themselves, may have the care provided by the physicians appointed by *the* board who shall be known as county physicians or deputy county physicians, and may fix a rate of compensation for the furnishing of *the* medical attendance.

(4) The board of county commissioners shall *make* suitable arrangements to provide respectable burial for those for whom such expenses are not otherwise available."

Section 30. Section 71-501, R.C.M. 1947, is amended to read as follows:

"71-501. **"Dependent child" defined.** (1) The term "dependent child" means a child (a) under the age of eighteen (18), or (b) under the age of twenty-one (21) who is a student under the regulations prescribed by the state department and such children (a and b above) who have been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, and

who is living with his father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, nephew, niece, or first cousin, in a place of residence maintained by one or more of such relatives as his or their own home.

(2) Aid to dependent children *may* not be denied to or for the care of children who would otherwise be entitled to such aid under the laws of *this* state by the fact that *the* child is living in the home of his or her father, who is in the opinion of the county board of public welfare of the appropriate county either unemployable or who is honestly and responsibly seeking proper employment and is unable to find such employment nor by the fact that *the* child is living in the home of a head of a household who is, at the time, receiving job training under the laws of *this* state; nor shall the benefits which would otherwise accrue to *the* child for aid to dependent children under the laws of the state be reduced by reason of any such cause.

(3) Primary factors in determining whether a father is honestly and responsibly seeking employment *include* his willingness to register for employment with the *department of labor and industry* if *that department* has a representative in his county of residence, and his willingness to accept employment in which he is able to engage which will increase his ability to maintain himself and his family.

(4) The state department of *social and rehabilitation services* may establish additional criteria for determining whether a father is honestly and responsibly seeking employment."

Section 31. Section 71-708, R.C.M. 1947, is amended to read as follows:

"71-708. **Powers and duties of the state department.** Subject to the authority and regulations of the state department and in *cooperation* with the federal *government*, the state department shall:

(1) *Adopt rules necessary to carry out the purposes of this chapter;*

(2) Administer or supervise all child welfare activities of the state except *the* child welfare activities *which* are administered by the *department of health and environmental sciences*."

Section 32. Section 71-709, R.C.M. 1947, is amended to read as follows:

"71-709. **Duty to strengthen child welfare services.** The state department shall make provision for establishing and strengthening child welfare services, including protective services and for care of children in family foster homes. When funds are available for that purpose, the *state department may* make agreements for the payment of compensation for keeping children in family foster homes."

Section 33. Section 71-1401, R.C.M. 1947, is amended to read as follows:

"71-1401. **Definitions.** As used in this act:

(1) "Vocational rehabilitation" and "vocational rehabilitation services"

mean any services, provided directly or through public or private instrumentalities, found by the *state department of social and rehabilitation services* to be necessary to compensate a blind individual for his employment handicap, and to enable him to engage in a remunerative occupation including, but not limited to, medical and vocational diagnosis, vocational guidance, counseling and placement, rehabilitation training, physical restoration, transportation, occupational and business licenses, tools, equipment, initial stocks and supplies, including livestock, capital advances, maintenance, and training books and materials.

(2) "Rehabilitation services" means any services, provided directly or through public or private instrumentalities, found by the *state department of social and rehabilitation services* to be necessary to compensate a blind individual for his employment handicap or to enable him to achieve the maximum degree of self-care and to engage in productive tasks.

(3) "Rehabilitation training" means all necessary training provided to a blind individual to compensate for his employment handicap including but not limited to, manual, preconditioning prevocational, and supplementary training and training provided for the purpose of achieving broader or more remunerative skills and capacities.

(4) "Physical restoration" means any medical, surgical or therapeutic treatment necessary to correct or substantially reduce a blind individual's employment handicap within a reasonable length of time including, but not limited to, medical, psychiatric, dental and surgical treatment, nursing services, hospital care, convalescent home care, drugs, medical and surgical supplies, and prosthetic appliances, but excluding curative treatment for acute or transitory conditions.

(5) "Prosthetic appliance" means *an* artificial device necessary to support or take the place of a part of the body or to increase the acuity of a sense organ.

(6) "Occupational licenses" means *a* license, permit, or other written authority required by any governmental unit to be obtained in order to engage in an occupation.

(7) "Business licenses" means any license, permit, or other written authority required by any governmental unit to be obtained in order to engage in a business.

(8) "Maintenance" means money payments not exceeding the estimated cost of subsistence during the provision of vocational rehabilitation and rehabilitation services.

(9) "Blind individual" means an individual whose central visual acuity does not exceed 20/200 in the better eye with correcting lenses, or whose visual acuity is greater than 20/200 but is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees; or who has other eye conditions which render vision equally defective; or who has an eye condition which will cause blindness."

Section 34. Section 71-1404, R.C.M. 1947, is amended to read as follows:

"71-1404. **Administration.** *The state department shall provide the services authorized by this act to blind individuals determined by it to be eligible therefor and, in carrying out the purposes of this act the department may, among other things:*

(1) *Cooperate with other departments, agencies, and institutions, both public and private, in providing the services authorized by this act to blind individuals, in studying the problems involved therein, and in establishing, developing, and providing, in conformity with the purposes of this act, such programs, facilities and services as may be necessary or desirable;*

(2) *Enter into reciprocal agreements with other states to provide the services authorized by this act to residents of the states concerned;*

(3) *Conduct research and compile statistics relating to the provision of services to or the need of services of blind individuals;*

(4) *Take other action necessary or appropriate to carry out this act."*

Section 35. Section 71-1407, R.C.M. 1947, is amended to read as follows:

"71-1407. **Gifts.** *The department shall accept and use gifts made unconditionally by will or otherwise for the purposes of this act. Gifts made under such conditions as in the judgment of the state department are proper and consistent with the provisions of this act may be so accepted and shall be held, invested, reinvested, and used in accordance with the conditions of the gift."*

Section 36. There is a new section to be numbered 71-1901, R.C.M. 1947, which reads as follows:

71-1901. **Definition.** *Unless the context requires otherwise, in this chapter, "board" means the board of veterans' affairs provided for in section 82A-1905.*

Section 37. Section 77-1002, R.C.M. 1947, is renumbered section 71-1902 and is amended to read as follows:

"71-1902. **Duty of board.** *The board shall establish a state-wide service for discharged veterans and their families; actively cooperate with state and federal agencies having to do with the affairs of veterans and their families; and promote the general welfare of all veterans and their families. Employees of the board must be residents of this state. All male employees of the board shall have served in the military forces of the United States during World War I, World War II, the Korean War, or the Vietnam Conflict, and shall have been honorably discharged therefrom; whenever possible female employees shall also be persons honorably discharged from service during World War I, World War II, the Korean War, or the Vietnam Conflict; preference for employment shall be given to disabled veterans."*

Section 38. Section 77-1005, R.C.M. 1947, is renumbered section 71-1903 and is amended to read as follows:

"71-1903. **Acknowledgments — officers.** (1) *The board may pro-*

vide for a seal. The members and employees of the *board* may take acknowledgments, depositions, and administer oaths and affirmations in any matters connected with the affairs of the *board* or with the official duties of the members or employees of the *board*.

(2) *The board shall select from its membership, a chairman, a vice chairman, and a secretary.*"

Section 39. Section 77-1006, R.C.M. 1947, is renumbered section 71-1904 and is amended to read as follows:

**"71-1904. Aid to be rendered by state, county and municipal officers.** All state, county, and municipal officers *shall* render such aid to the *board* as shall be within their power and consistent with the duties of their respective offices."

Section 40. Section 77-1007, R.C.M. 1947, is renumbered section 71-1905 and is amended to read as follows:

**"71-1905. Acceptance of money for service forbidden.** A member or employee of the *board* *may not* accept, receive, or charge any money or thing of value for the performance of any service rendered to any veteran or his or her dependents, at any time or in any manner, other than the compensation allowed by law. A person who *violates* this section is guilty of a misdemeanor."

Section 41. Section 77-1009, R.C.M. 1947, is renumbered section 71-1906 and is amended to read as follows:

**"71-1906. Board may accept federal funds.** The *board* *may* accept from the federal government, or any agencies thereof, any funds made available to carry out purposes within the scope of the activities and commission purposes of the *board* and accept such funds as *the board directs*."

Section 42. Section 77-1010, R.C.M. 1947, is renumbered section 71-1907 and is amended to read as follows:

**"71-1907. Contracts for reimbursing board authorized.** The governor of *this* state and the chairman and secretary of the *board* *may* sign contracts with the federal government or any agency thereof for the reimbursement of the veterans' welfare commission for any work which the *board* may do for which any federal statute provides reimbursement to the states."

Section 43. Section 82-3504, R.C.M. 1947, is renumbered section 71-2001 and is amended to read as follows:

**"71-2001. Functions of state department.** The *state department of social and rehabilitation services* shall:

(1) Consult with and advise organized efforts by communities, organizations, associations, and groups that are working toward any forms of assistance to problems of aging.

(2) Study and identify problems of aging.

(3) Review existing programs for the aging and make recommenda-



tions to the governor and the legislature for improvements in such programs.

(4) Encourage the sponsorship of community projects which will seek to make optimum use of the time and talents of retired persons."

Section 44. Section 82-3505, R.C.M. 1947, is renumbered section 71-2002 and is amended to read as follows:

**"71-2002. Grants and gifts to state department — deposit and availability.** The *state department* may receive on behalf of the state any grant from the federal government or any grant or gift from any source and accept the *grant or gift* so that the title shall pass to the state. All grants, grants-in-aid, or gifts shall be deposited with the state treasurer and shall be continuously available to the *state department*."

Section 45. There is a new section to be numbered 82A-1901.1, R.C.M. 1947, which reads as follows:

**82A-1901.1. Functions of department.** The department and its units are responsible for administering laws pertaining to public assistance, including, but not limited to:

- (1) Dependent and neglected children (Title 10, chapter 5);
- (2) Child adoption agencies (Title 10, chapter 7);
- (3) Day care facilities for children (Title 10, chapter 8);
- (4) Adoptions (Title 61, chapter 2);
- (5) County poor (Title 71, chapter 1);
- (6) Department's functions and county departments of public welfare (Title 71, chapter 2);
- (7) General relief (Title 71, chapter 3);
- (8) Old-age assistance (Title 71, chapter 4);
- (9) Aid to dependent children (Title 71, chapter 5);
- (10) Aid to blind (Title 71, chapter 6);
- (11) Child welfare (Title 71, chapter 7);
- (12) Disabled persons (Title 71, chapter 12);
- (13) Services to the blind (Title 71, chapter 14);
- (14) Medical assistance (Title 71, chapter 15);
- (15) Vocational rehabilitation and education (Title 71, chapter 18);
- (16) Veterans' welfare (Title 71, chapter 19);
- (17) Problems of aging (Title 71, chapter 20).

Section 46. Section 82A-1905, R.C.M. 1947, is amended to read as follows:

**"82A-1905. Board of veterans' affairs — composition — qualifications — term — allocated.** (1) *There is a board of veterans' affairs.*

(2) *The board consists of five (5) members appointed by the governor. Not more than one (1) member shall be appointed from a single county. However, a change of residence within the state after appointment does not alter a member's status. All members shall be residents of this state, and shall have been honorably discharged from service in the military forces of the United States in any of its wars. A vacancy occurring on the board shall be filled by the governor, subject to the conditions of this subsection.*

(3) *Each member shall serve for a term of five (5) years.*

(4) The board is *allocated* to the department for administrative purposes only as prescribed in section 82A-108. However, the board may hire its own personnel, and section 82A-108(2)(d) does not apply."

Section 47. Wherever the words "state bureau of child and animal protection," "division of child welfare services of the state department of public welfare," "division of child welfare service," "bureau of child protection," "division of child welfare services of the state department of public welfare," or "state department of public welfare" appear in sections 10-503, 10-504, 10-519, 10-521, 10-522, and 71-1511, R.C.M. 1947, the words "state department of social and rehabilitation services" are substituted therefor.

Section 48. Wherever the words "state department of public welfare," "department of public welfare," or "state department of welfare" appear in sections 10-507, 10-524, 61-205, 61-208, 61-209, 61-211, 71-1511, 93-2601-57, and 93-2601-78, R.C.M. 1947, the words "state department of social and rehabilitation services" are substituted therefor.

Section 49. Wherever the words "state department of public welfare," "department of public welfare," "state public welfare department," "state board of public welfare," "board of public welfare," "board," "state board," "state welfare board," "state administrator," "administrator," or "supervisor" appear in sections 10-703, 10-704, 10-705, 10-802, 10-808, 10-809, 71-207, 71-230, 71-234, 71-236, 71-237, 71-239, 71-240, 71-247, 71-250, 71-404, 71-412, 71-509, 71-606, 71-706, 71-901, 71-1202, 71-1205, 71-1406, 71-1408, 71-1409, and 71-1515, R.C.M. 1947, the words "state department" are substituted therefor.

Section 50. Wherever the words "state board," "state department of public welfare," "state board of public welfare," or "state administrator," appear in sections 71-216, 71-217, 71-227, 71-233, 71-242, 71-311, 71-401, 71-503, 71-602, and 71-1201, R.C.M. 1947, the words "state department" are substituted therefor.

Section 51. The publishers of the Revised Codes of Montana, 1947, are directed, under the supervision of the supreme court of Montana, to make the substitutions enumerated in sections 47, 48, 49, and 50 of this act, when reprinting sections or portions of sections of the Revised Codes in either supplements to or replacement volumes for the Revised Codes.

Section 52. Sections 10-505, 41-802, 41-804, 41-807, 41-809, 41-811, 41-814, 41-815, 71-201 through 71-206, 71-208, 71-209, 71-220, 71-224, 71-225, 71-232, 71-310, 71-603, 71-707, 71-801, 71-902 through 71-904,

71-1101 through 71-1107, 71-1402, 71-1403, 71-1410 through 71-1415, 71-1513, 71-1523, 77-1001, 77-1008, 77-1011, 82-3501 through 82-3503, 82A-1902 through 82A-1904, 82A-1907, and 82A-1908, R.C.M. 1947, are repealed.

Approved March 11, 1974

## CHAPTER NO. 122

AN ACT ALLOWING POLICEMEN AND HIGHWAY PATROLMEN TO SECURE SOCIAL SECURITY COVERAGE, AMENDING SECTIONS 59-1102.1 AND 59-1108, R.C.M. 1947.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 59-1108, R.C.M. 1947, is amended to read as follows:

"59-1108. **Persons excepted from act.** This act shall not apply to, and there shall be excluded from the operation thereof, all employees of the state and of the political subdivisions thereof operating under the provisions of any retirement plan for firemen."

Section 2. Section 59-1102.1, R.C.M. 1947, is amended to read as follows:

"59-1102.1. **Referendum and certification.** (a) Pursuant to section 218 (d) (6) of the Social Security Act, the public employees' retirement system of the state of Montana shall, for the purposes of this act, be deemed to constitute a separate retirement system with respect to the state and a separate retirement system with respect to each political subdivision having positions covered thereby. With respect to employees of the state the governor is empowered to authorize a referendum, and with respect to the employees of any political subdivision he shall authorize a referendum upon request of the governing body of such subdivision; and in either case the referendum shall be conducted, and the governor shall designate an agency or individual to supervise its conduct, in accordance with the requirements of section 218(d) (3) of the Social Security Act, on the question of whether service in positions covered by a retirement system established by the state or by a political subdivision thereof should be excluded from or included under this act. The notice of referendum required by section 218(d) (3) (C) of the Social Security Act to be given to employees shall contain or shall be accompanied by a statement, in such form and such detail as the agency or individual designated to supervise the referendum shall deem necessary and sufficient, to inform the employees of the rights which will accrue to them and their dependents and survivors, and the liabilities to which they will be subject, if their services are included under an agreement under this act.

(b) *Pursuant to section 218 (p) (1) of the Social Security Act, the highway patrolmen's retirement system of the state of Montana, and the public*

*employees' retirement system of the state of Montana and the metropolitan police retirement system of the various cities of Montana shall, for the purposes of this act be deemed to constitute separate retirement systems with respect to the state and separate retirement systems with respect to each political subdivision having portions covered thereby. With respect to highway patrolmen of the state the governor is empowered to authorize a referendum and with respect to the employees of any political subdivision he shall authorize a referendum upon request of the governing body of such subdivision and in either case the referendum shall be conducted, and the governor shall designate an agency or individual to supervise its conduct, in accordance with the requirements of section 218 (d) (3) of the Social Security Act, on the question of whether service in positions covered by a retirement system established by the state or by a political subdivision thereof should be excluded from or included under this act. The notice of referendum required by section 218 (d) (3) (C) of the Social Security Act to be given to employees shall contain or shall be accompanied by a statement, in such form and such detail as the agency or individual designated to supervise the referendum shall deem necessary and sufficient, to inform the employees of the rights which will accrue to them and their dependents and survivors, and the liabilities to which they will be subject, if their services are included under an agreement under this act.*

(c) Upon receiving evidence satisfactory to him that with respect to any such referendum the conditions specified in section 218(d) (3) of the Social Security Act have been met, the governor shall so certify to the secretary of health, education, and welfare."

Approved March 11, 1974

## CHAPTER NO. 123

### AN ACT PERMITTING STATE AGENCIES TO CONTRACT WITH REHABILITATION ORIENTED AGENCIES WITHOUT COMPETITIVE BIDDING IN CERTAIN INSTANCES.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is a new section to be numbered 82-1938, R.C.M. 1947, which reads as follows:

82-1938. **Policy.** It is the policy of the state of Montana to encourage state agencies to negotiate contracts with sheltered workshops and work activity centers principally engaged in rehabilitation programs that are located in Montana.

Section 2. There is a new section to be numbered 82-1939, R.C.M. 1947, which reads as follows:

82-1939. **Definition.** For the purpose of this act, a "sheltered workshop" and a "work activity center" mean a workshop having a sheltered workshop certificate, or an evaluation and training certificate, or a work

activities center certificate issued by the wage and hour division of the United States department of labor; or recognized by the department of social and rehabilitation services in Montana.

Section 3. There is a new section to be numbered 82-1940, R.C.M. 1947, which reads as follows:

**82-1940. Contracts negotiable without competitive bidding under certain circumstances.** State agencies may negotiate contracts for the purchase of products not exceeding five thousand dollars (\$5,000) from sheltered workshops and work activity centers located in Montana without complying with the provisions of Title 82, chapter 19, concerning competitive bidding.

Approved March 11, 1974

## CHAPTER NO. 124

AN ACT AMENDING SECTION 11-1704, R.C.M. 1947; PROVIDING THAT MUNICIPAL JUDGES' SALARIES BE SET BY CITY ORDINANCE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 11-1704, R.C.M. 1947, is amended to read as follows:

**"11-1704. Qualifications and salary.** Municipal judges shall have the same qualifications as judges of the district court and must be a resident and voter in the city for which he is elected at the time of his election. The salary of such judges shall be *set by city ordinance and* payable monthly by the city treasurer of the city in which such court is."

Approved March 11, 1974

## CHAPTER NO. 125

AN ACT REQUIRING THE UNDERGROUND INSTALLATION OF ELECTRIC POWER DISTRIBUTION LINES IN NEW SERVICE AREAS.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is a new section to be numbered 7-304, R.C.M. 1947, which reads as follows:

**70-304. Underground power lines in new service areas.** A firm, agency, or person exercising the rights conferred by section 70-301 shall

install underground all lines used for the distribution of electricity in a new service area when technically and economically feasible. As used in this section, "new service area" means any subdivision or group of newly constructed or newly installed dwellings (including mobile homes) or commercial buildings which, when occupied, will generate at least five contracts for the supply of electricity, and "lines used for the distribution of electricity" means all the distribution lines in the new service area through which electricity passes before it is utilized by the consumer and the consumer's dwelling or place of business. The public service commission may make rules to implement this section.

Approved March 11, 1974

## CHAPTER NO. 126

AN ACT AMENDING SECTION 94-5-304, R.C.M. 1947, TO REQUIRE THE DEATH PENALTY REGARDLESS OF MITIGATING CIRCUMSTANCES FOR THE CRIME OF AGGRAVATED KIDNAPPING WHEN THE VICTIM DIES OR IS KILLED; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 94-5-304, R.C.M. 1947, is amended to read as follows:

"94-5-304. **Sentence of death for aggravated kidnapping.** A court shall impose the sentence of death following conviction of aggravated kidnapping if it finds that the victim is dead as the result of the criminal conduct."

Section 2. This act is effective upon passage and approval.

Approved March 11, 1974

## CHAPTER NO. 127

AN ACT AMENDING SECTIONS 27-407 AND 27-409, R.C.M. 1947, TO APPLY THE RULEMAKING PROCEDURES OF THE ADMINISTRATIVE PROCEDURE ACT TO PROCEEDINGS FOR FIXING MINIMUM PRICES BY THE BOARD OF MILK CONTROL; FIXING FEES ASSESSED TO FUND PROGRAMS OF THE BOARD OF MILK CONTROL; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 27-407, R.C.M. 1947, is amended to read as follows:

"27-407. **Establishment of minimum prices.** The board shall fix minimum producer, wholesale, jobber, and retail prices for class I milk, and minimum producer prices only for class II and class III milk in all areas of the state, *by adopting rules in a manner prescribed by the Montana Administrative Procedure Act.*

The board shall establish such prices by means of flexible formulas which shall be devised so that they bring about such automatic changes in all minimum prices as are justified on the basis of changes in production costs and supply, processing and distribution costs, and retailing costs.

The board shall *consider* the balance between production and consumption of milk, the costs of production and distribution, and prices in adjacent and neighboring areas and states, so that minimum prices which are fair and equitable to producers, distributors, jobbers, retailers, and consumers may result.

The board shall, *when publishing notice of proposed rule making under authority of this section, set forth* the specific factors which shall be taken into consideration in establishing the formulas and in particular in determining costs of production and distribution and of the actual dollars and cents costs of production and distribution which preliminary studies and investigations of auditors or accountants in its employment indicate will or should be shown at the hearing, so that all interested parties will have opportunity to be heard and to question or rebut such considerations as a matter of record.

Such specific factors may include, but shall not be limited to, the following items:

(1) Current and prospective supplies of milk in relation to current and prospective demands for such milk for all purposes;

(2) The ability and willingness of consumers to purchase, which shall include among other things, per capita disposable income statistics, consumer price indices, and wholesale price indices;

(3) The cost factors in producing milk, which shall include among other things the prices paid by farmers generally (as used in parity calculations of the United States Department of Agriculture), prices paid by farmers for dairy feed in particular and farm wage rates in this state;

(4) The alternative opportunities, both farm and nonfarm, open to milk producers, which shall include among other things, prices received by farmers for all products other than milk, prices received by farmers for beef cattle, and the percentage of unemployment in the state and nation as determined by appropriate state and federal agencies;

(5) The prices of butter-nonfat dry milk, and cheese;

(6) The cost factors in distributing milk, which shall include among other things the prices paid by distributors for equipment of all types required to process and market milk and prevailing wage rates in this state;

(7) The cost factors in jobbing milk, which shall include among other things raw product and ingredient costs, carton or other packaging cost, processing cost and that part of general administrative costs of the supplying distributor which may properly be allocated to the handling of milk to the point at which such milk is at the supplying distributor's dock, equipment of all types required to market milk and prevailing wage rates in the state;

(8) The need, if any, for freight or transportation charges to be deducted by distributors from producer prices for bulk milk;

(9) A reasonable return on necessary investment to all ordinarily efficient and economical milk dealers.

If the board at any time proposes to base all or any part of any official order establishing or revising any milk pricing formulas upon facts within its own knowledge, as distinguished from evidence which may be presented to it by the consuming public or the milk industry, the board shall, *when publishing notice of proposed rule making under authority of this section*, cause notice to be given to the consuming public and the milk industry of the specific facts within its own knowledge which it will consider, so that all interested parties will have opportunity to be heard and to question or rebut such facts as a matter of record.

The board, after consideration of the evidence produced, shall make written findings and conclusions and shall fix by official *rule*:

(a) The formula whereby minimum producer prices for milk in classes I, II, and III shall be computed.

(b) The formula whereby minimum wholesale prices for milk in class I shall be computed.

(c) The formula whereby minimum jobber prices for milk in class I shall be computed.

(d) The formula whereby minimum retail prices for milk in class I shall be computed.

This section shall not be construed as requiring the board to promulgate any specific number of formulas, but shall be construed liberally so that the board may adopt any reasonable method of expression to accomplish the objective set forth in (a), (b), (c), and (d) above. If the evidence presented to the board at any public hearing for the establishment or revision of milk pricing formulas is found by the board to require the establishment of separate and varying wholesale prices for any particular uses, the board shall designate the reasons therefor and establish such separate formulas.

Each *rule* establishing or revising any milk pricing formulas shall classify milk by forms, classes, grades or uses as the board may deem advisable and shall specify the minimum prices therefor.

The milk produced in one natural marketing area and sold in another natural marketing area shall be paid for by a distributor or dealer in accordance with the pricing order of the area where produced at the price therein specified of the class or use in which it is ultimately used or sold.



No allowance for freight, other than freight for transportation of milk from the farm to plant, shall be charged to a producer by a distributor or dealer unless it is found and ordered by the board, after notice and hearing in the manner hereinbefore specified, that such an additional freight allowance is necessary to permit the movement of milk in the public interest.

All milk purchased within a natural marketing area by a distributor shall be purchased on a uniform basis. The basis to be used shall be established by the board after the producers and the distributors of the area have been consulted.

The board may amend any official *rule* in the same manner provided herein for the original establishment of milk pricing formulas; provided, further, the board may in its discretion, when it determines the need exists, notice and hold state-wide public hearings affecting establishment or revision of milk pricing formulas in all market areas of the state.

Upon petition of a distributor or a majority of his producers, the board shall hold a hearing to receive and consider evidence regarding the advisability and need for a base or quota plan as a method of payment by that distributor of producer prices; and if the board finds that the evidence adduced at such hearing warrants the establishment of a base or quota plan, the board shall proceed by official order to establish the same.

Upon petition by any producer, producer-distributor or distributor in any marketing area, the board shall hold a hearing to receive and consider evidence regarding the advisability and need for an area-wide or state-wide pooling arrangement as a method of payment of producer prices, provided that at such hearing the board shall among other things specifically receive and consider evidence concerning production and marketing practices which have historically prevailed in the area concerned or state-wide, as the case may be; and if the board finds that the evidence adduced at such hearing warrants the establishment of such an area-wide or state-wide pooling arrangement, the board shall proceed by official order to establish the same, but such official order shall be of no force or effect until it is approved in a referendum conducted by the board among affected producers, producer-distributors, and distributors.

The requirements hereinabove set forth concerning notices of hearings for the establishment of milk pricing formulas shall apply to any hearings regarding base or quota plans or area-wide or state-wide pooling arrangements, or abandonment thereof."

Section 2. Section 27-409, R.C.M. 1947, is amended to read as follows:

"27-409. **Licenses — disposition of income.** No producer, producer-distributor, distributor or jobber shall engage in the business of producing or selling milk subject to this act in this state without first having obtained a license from the *department of livestock, animal health division* or, in the case of milk entering this state from another state or foreign nation, without complying with the requirements of the Montana Food, Drug and Cosmetic Act, and without being licensed under this act by the *department of business regulation*. The annual fee for such license from the *department of business regulation* shall be two dollars (\$2), shall be

due and payable on or before the first day of July, and shall be deposited by said *department* to the credit of the general fund.

In addition to such annual license fee, the *department* shall, in each year, on or before the first day of April, for the purpose of securing funds to administer and enforce this act, levy an assessment upon producers, producer-distributors, and distributors as follows:

(a) A fee per hundredweight on the total volume of all milk subject to this act produced and sold by a producer-distributor.

(b) A fee per hundredweight on the total volume of all milk subject to this act sold by a producer.

(c) A fee per hundredweight on the total volume of all milk subject to this act sold by a distributor, excepting that which is sold to another distributor.

*The department shall adopt rules fixing the amount of each fee. The amounts may not exceed levels sufficient to provide for the administration of this act. The fee assessed on a producer or on a distributor may not be more than one-half (½) the fee assessed on a producer-distributor.*

Said assessment upon producer-distributors, producers, and distributors shall be paid quarterly on or before the fifteenth [15th] day of July, October, January and April of each year, and the amount of such assessment shall be computed by applying the fee designated by the *department* to the volume of milk sold in the calendar quarter immediately preceding.

Failure of any producer, producer-distributor, or distributor to pay said assessment when due shall constitute violation of this act and his license under this act shall thereupon automatically terminate and be null and void and of no effect. Reinstatement of a license so terminated shall be affected by payment of a delinquency fee equal to thirty per cent (30%) of the assessment which was due.

All assessments hereinbefore required to be paid shall be deposited by the *department of business regulation* in the earmarked revenue fund; and all costs of administering this act, including the salaries of employees and assistants, per diem and expenses of board members, and all other disbursements necessary to carry out the purpose of this act, shall be paid out of *department of business regulation* moneys in such fund.

The *department* may, if it finds the costs of administering and enforcing this act can be derived from lower rates, *amend its rules to fix the rates at a less amount on or before the first day of April in any year.*"

Section 3. This act is effective on its passage and approval.

Approved March 11, 1974

## CHAPTER NO. 128

### AN ACT REQUIRING THE STATE BOARD OF INVESTMENTS TO

MANAGE ASSETS OF THE POLICE RESERVE FUNDS IN THE POOLED INVESTMENT FUND; REQUIRING ACTUARIAL VALUATIONS OF POLICE RESERVE FUNDS FOR THE DEPARTMENT OF INTERGOVERNMENTAL RELATIONS; FUNDING SUCH VALUATIONS; AMENDING SECTIONS 11-1829, AND 11-1835, R.C.M. 1947; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 11-1829, R.C.M. 1947, is amended to read as follows:

**"11-1829. Actuarial valuation and investment of police reserve funds.** (1) *The city treasurer shall submit to the department of intergovernmental relations before October 1 in each odd-numbered year all information requested by the department of intergovernmental relations necessary to complete an actuarial valuation of the police reserve funds. This valuation is to be prepared by a qualified actuary selected by the department of intergovernmental relations. This valuation shall consider the actuarial soundness of the police reserve funds for the two (2) preceding fiscal years. A qualified actuary is a member of the American Academy of Actuaries or of any organization deemed by the department of intergovernmental relations to have similar standards. In each fiscal year in which an actuarial valuation is prepared, the department of intergovernmental relations shall submit to the state auditor a request for payment of the expense incurred in securing the actuarial valuation. The expense may not exceed six thousand dollars (\$6,000) in any fiscal year and the state auditor shall make payment to the actuary designated in the request.*

(2) *Whenever the monies in the police reserve fund exceed:*

(a) *one and one-half (1½) times the monthly benefit paid in the preceding month, or*

(b) *five thousand dollars (\$5,000), whichever is greater, then the city treasurer shall remit such excess amounts to the state treasurer. The state treasurer shall invest such remittances under the direction of the state board of investments as provided by section 79-311.*

(3) *After January 1, 1975, all investments of the police reserve fund shall be transferred as directed by the state board of investments. The state board of investments may defer any such transfer to a date later than January 1, 1975, but not later than the maturity date of the investment. The board of investment may make rules to implement this section."*

Section 2. Section 11-1835, R.C.M. 1947, is amended to read as follows:

**"11-1835. State payments to come from motor vehicle insurance premium tax.** *The payments provided for by sections 11-1829 and 11-1834 shall be paid from the premium tax collected on motor vehicle insurance sold in this state to insure against the following risks: motor vehicle physical damage; property damage; bodily injury. Such payments will only*

be made after deductions have been made from the gross premium tax for cancellations and returned premiums."

Section 3. This act shall be effective on January 1, 1975.

Approved March 11, 1974

## CHAPTER NO. 129

AN ACT CONFIRMING THE STATUS OF HALFWAY HOUSES AND DISTRICT YOUTH GUIDANCE HOMES SERVING EIGHT (8) OR FEWER PERSONS AS RESIDENTIAL OCCUPANCIES FOR ZONING, HEALTH, AND SAFETY CODE PURPOSES, AND AMENDING SECTIONS 11-2702.1 AND 11-2702.2, R.C.M. 1947.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 11-2702.1, R.C.M. 1947, is amended to read as follows:

"11-2702.1. **Community residential facility—defined.** "Community residential facility" means (1) a group, foster, or other home specifically provided as a place of residence for developmentally disabled or handicapped persons who do not require nursing care, or (2) a district youth guidance home established pursuant to section 10-1103, or (3) a halfway house operated in accordance with regulations of the department of health and environmental sciences for the rehabilitation of alcoholics or drug dependent persons."

Section 2. Section 11-2702.2, R.C.M. 1947, is amended to read as follows:

"11-2702.2. **Foster, boarding homes, community residential facilities considered residential.** A foster or boarding home operated under the provision of sections 10-520 through 10-523, or community residential facility serving eight (8) or fewer persons, is considered a residential use of property for purposes of zoning if the home provides care on a twenty-four (24) hour a day basis.

The homes are a permitted use in all residential zones, including, but not limited to, residential zones for single-family dwellings. Nothing in this paragraph shall be construed to prohibit a city or county from requiring a conditional use permit in order to maintain a home pursuant to the provisions of this paragraph; provided such home is licensed by the department of health and environmental sciences and the department of social and rehabilitation services. Any safety or sanitary regulation of the department or any other agency of the state or political subdivision thereof which is not applicable to residential occupancies in general may not be applied to a community residential facility serving eight (8) or fewer persons."

Approved March 11, 1974

## CHAPTER NO. 130

AN ACT AMENDING SECTION 60-145, R.C.M. 1947, TO ALLOW

**SIXTY (60) DAYS FOR FILING CRUDE OIL PRODUCTION AND NATURAL GAS PRODUCTION STATEMENTS.**

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 60-145, R.C.M. 1947, is amended to read as follows:

**"60-145. Privilege and license tax — quarterly statements — penalties — drilling permit fees — oil and gas conservation moneys.**

A. For the purpose of providing funds for defraying the expenses of the operation and enforcement of this act, and expenses of said oil and gas conservation commission, the operators and producers of oil and gas shall be required to pay, and they will pay, an assessment not to exceed the amounts set forth in the following schedule on each and every barrel of crude petroleum originally produced, saved and marketed or stored within the state of Montana, or exported from the state of Montana, and on each and every ten thousand (10,000) cubic feet of natural gas produced, saved and marketed or stored within the state of Montana, or exported therefrom, to wit:

(1) On leases on which wells are producing an average of twenty-five (25) barrels of crude petroleum per day, or less, an assessment not to exceed three-eighths of one cent ( $\frac{3}{8}\text{¢}$ ) per barrel;

(2) On leases on which wells are producing an average of more than twenty-five (25) barrels of crude petroleum per day, an assessment not to exceed three-fourths of one cent ( $\frac{3}{4}\text{¢}$ ) per barrel;

(3) And, on wells producing, saving and marketing, storing, or exporting, natural gas, said operators and producers shall pay an assessment not to exceed two and one-half ( $2\frac{1}{2}$ ) mills per ten thousand (10,000) cubic feet of natural gas where said gas is marketed for less than fifteen cents (15¢) per thousand (1,000) cubic feet and an assessment not to exceed five (5) mills per ten thousand (10,000) cubic feet of natural gas where said gas is marketed for fifteen cents (15¢) or more per thousand (1,000) cubic feet. Such payments shall be made during the time the oil and gas conservation commission is in existence. The commission shall by order, without prior notice and/or hearing, fix the amount of such assessments in the first instance and may, from time to time, without prior notice and/or hearing, reduce or increase the amount thereof as, in its judgment, the expenses chargeable against the oil and gas conservation fund may require; provided, however, that in no event shall the assessments fixed by the commission exceed the said limits hereinabove prescribed. The amounts of such assessments to be fixed by the commission in the first instance and from time to time as herein provided, shall be a percentage factor (not to exceed one hundred percent (100%)) of the rates set forth in subparagraphs (1), (2) and (3) above, and the same percentage factor shall be used and applied by the commission in fixing the amount of the assessment on each barrel of crude production and each ten thousand (10,000) cubic feet of natural gas mentioned in said subparagraphs (1), (2) and (3) above. The producers of said crude petroleum and natural gas shall pay such assessments on each and every barrel of crude petroleum and each ten thousand (10,000) cubic feet of natural gas produced

for themselves, as well as for others, including royalty holders, and said producers shall be reimbursed for such payments made on crude oil and natural gas produced for others in the same manner as they are reimbursed for net proceeds tax paid on crude petroleum or natural gas produced for others as provided for in section 84-6208.

For the purposes of this section, a "lease" shall mean that particularly described tract of land contained in a contract in writing, under seal, whereby a person having a legal estate in the land so described conveys a portion of his interest to another, in consideration of a certain rental or other recompense or consideration. Further, for the purposes of this section, leases owned or operated by one lessee which in whole or in part cover or affect an underground reservoir containing a common accumulation of crude petroleum oil or natural gas, or both, or which are encompassed within or affected by one particular unit agreement shall be considered as one lease relative to payments to be made under this section.

In addition to the above-mentioned privilege and license tax, any person, before commencing the drilling of any oil or gas well or stratigraphic test well or core hole, shall secure from the commission a drilling permit and shall pay to the commission therefor the following amounts: for each well whose estimated depth is thirty-five hundred (3500) feet or less, twenty-five dollars (\$25); from thirty-five hundred and one (3501) feet to seven thousand (7,000) feet, seventy-five dollars (\$75); seven thousand (7,000) feet and deeper, one hundred fifty dollars (\$150).

B. Each producer of crude petroleum in the state of Montana shall, not later than the last day of each of the calendar months of *February, May, August and November*, of each and every calendar year, render a true statement to the state treasurer of the state of Montana, and a duplicate thereof to the commission, duly signed and sworn to, of all crude petroleum produced by him in this state during the preceding *quarter*, and containing such other information as the commission may require, and shall accompany such statement with the payment to the state treasurer of the assessment provided for in subsection A. of this section, above, for the period covered by such statement. Each producer of natural gas in the state of Montana shall render like statements to the state treasurer of all natural gas produced by him in this state, and shall make payment of the assessment provided for in said subsection A. of this section, above, at such times and for such periods as may be prescribed by regulation of the commission. Any producer carrying on business at more than one (1) place or location in this state may include all such places of business in one (1) statement.

C. Any such assessment not paid within the time herein specified shall be delinquent, and a penalty of twenty-five per cent (25%) thereof shall be added thereto and the whole thereof shall bear interest at the rate of one *percent* (1%) per month from the date of delinquency until paid. Upon request of the commission it shall be the duty of the attorney general to commence and prosecute to final determination in any court of competent jurisdiction an action at law to collect the same.

D. All money collected under the provisions of this act shall be deposited in the earmarked revenue fund by the state treasurer of the state

of Montana, and shall be used for the purpose of paying all expenses of said commission and for no other purpose; all such moneys shall be used by said commission subject to the approval of the controller and biennial appropriations by the legislative assembly. Upon the termination of said commission any such money remaining shall be paid over to the general fund of the state. All accounts and expenditures of said commission shall be certified by the commission, approved as provided by law, and paid by the state treasurer.

E. The commission may appoint a secretary and employ such other persons as experts, assistants, clerks, and stenographers, as may be deemed necessary to perform the duties that may be required of it, and fix their compensation; provided, however, that the total expenditures of such commission shall not exceed in the aggregate during any fiscal year, the amount actually collected under the provisions of subsection A. of this section, above, plus any amount appropriated for that purpose. The members of the commission shall be allowed their several expenses incurred in the discharge of their duties, as is elsewhere provided in this act."

Approved March 11, 1974

## CHAPTER NO. 131

AN ACT LIMITING EACH SIDE TO THREE (3) PEREMPTORY CHALLENGES WHEN A CIVIL OR CRIMINAL CASE IS TRIED BEFORE A SIX (6) PERSON JURY IN DISTRICT COURT; AND AMENDING SECTION 95-1909, R.C.M. 1947.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 95-1909, R.C.M. 1947, is amended to read as follows:

"95-1909. **Trial jurors.** (a) The clerk of court shall make available to the parties a list of prospective jurors with their addresses when drawn.

(b) (1) The qualifications of jurors, and who will be exempted, are found in sections 93-1301 through 93-1307, of the Civil Code, which by reference are made a part of this code.

(2) An exemption from service on a jury is not a cause of challenge, but the privilege of the person exempted.

(c) The county attorney and the defendant or his attorney shall conduct the examination of prospective jurors. The court may conduct an additional examination. The court may limit the examination by the defendant, his attorney or the prosecuting attorney if the court believes such examination to be improper.

(d) (1) Each party may challenge jurors for cause, and each challenge must be tried by the court.

(2) A challenge for cause may be taken for all or any of the following reasons; or for any other reason which the court determines:

(i) Consanguinity or relationship to the person alleged to be injured by the offense charged, or on whose complaint the prosecution was instituted, or to the defendant.

(ii) Standing in the relation of guardian and ward, attorney and client, master and servant, or landlord and tenant, debtor and creditor, or being a member of the family of the defendant, or of the person alleged to be injured by the offense charged, or on whose complaint the prosecution was instituted, or in his employment.

(iii) Being a party adverse to the defendant in a civil action, or having complained against or been accused by him in a criminal prosecution.

(iv) Having served on the grand jury which found the indictment, or on a coroner's jury which inquired into the death of a person whose death is the subject of the indictment or information.

(v) Having served on a trial jury which has tried another person for the offense charged.

(vi) Having been one of a jury formerly sworn to try the same charge, and whose verdict was set aside or which was discharged without verdict, after the case was submitted to it.

(vii) Having served as a juror in a civil action brought against the defendant for the act charged as an offense.

(viii) If the offense charged be punishable with death, with entertaining of such conscientious opinions as would preclude his finding the defendant guilty; in which case he must neither be permitted nor compelled to serve as a juror.

(ix) Having a belief that the punishment fixed by law is too severe for the offense charged.

(x) For the existence of a state of mind on the part of the juror in reference to the case, or to either of the parties, which will prevent him from acting with entire impartiality and without prejudice to the substantial rights of either party.

(e) All challenges must be interposed before the jury is sworn, unless the cause of challenge be discovered after the jury is sworn and before the introduction of any evidence, when the court, in its discretion may allow the challenge to be interposed.

(f) Each defendant shall be allowed eight (8) peremptory challenges in capital cases, six (6) in all other cases tried in the district court *before a twelve (12) person jury*, and three (3) in all cases tried in justice of the peace or police courts. However, there may not be additional challenges for separate counts charged in the indictment or information. If the indictment or information charges a capital offense, as well as lesser offenses in separate counts, the maximum number of challenges shall be eight (8). The state shall be allowed the same number of peremptory challenges as all of the defendants. *In a civil or criminal case tried in the*



*district court before a six (6) person jury, the state and all the defendants shall be allowed three (3) peremptory challenges each.*

(g) After the jury is impaneled and sworn, the court may direct the selection of one or more alternate jurors, in the same manner as principal jurors, who shall take the same oath as the principal jurors. Each party shall have one additional peremptory challenge for each alternate juror. Alternate jurors in the order in which they are called shall replace jurors who, prior to the time the jury arrives at its verdict, become unable or disqualified to perform their duties. An alternate juror shall not join the jury in its deliberation unless called upon by the court to replace a member of the jury. His conduct during the period in which the jury is considering its verdict shall be regulated by instructions of the trial court. An alternate juror who does not replace a principal juror shall be discharged after the jury arrives at its verdict.

(h) The jury shall return a general verdict to each offense charged.

(i) When, at the close of the state's evidence or at the close of all the evidence, the evidence is insufficient to support a finding or verdict of guilty, the court may on its own motion or on the motion of the defendant, dismiss the action and discharge the defendant. However, the court may allow the case to be reopened for good cause shown."

Approved March 11, 1974

## CHAPTER NO. 132

AN ACT TO PROVIDE FOR AN ELECTION TO AUTHORIZE AN  
ADDITIONAL TAX LEVY OF THREE (3) MILLS OR LESS FOR  
FUNDING PUBLIC HOSPITAL DISTRICTS.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is a new section to be numbered 16-4309.1, R.C.M. 1947, which reads as follows:

**16-4309.1. Additional tax levy — election — majority vote required.** (1) If the maximum levy of three (3) mills on each dollar of taxable valuation of property within the hospital district is inadequate to raise the amount of money certified as necessary and proper by the board of hospital trustees, as provided in section 16-4309, the board of county commissioners may make an additional levy upon the taxable property within said hospital district of three (3) mills or less sufficient to raise the amount certified by the board of hospital trustees.

(2) Before the additional levy may be made, the question shall be submitted to a vote of the people at some general or special election in the following form: "Shall there be an additional levy of (specify number) mills upon the taxable property of the (specify hospital district) necessary to raise the sum of (specify the amount to be raised by the additional

tax levy) for the purpose of (specify purpose for which the additional levy is made)?

☐ For an additional levy to raise the sum of (state the amount to be raise by the additional tax levy), and being (give number) mills.

☐ Against an additional tax levy to raise the sum of (state amount to be raised by the additional tax levy), and being (give number) mills."

(3) A majority of the votes cast shall be necessary to permit the additional levy which shall be collected in the same manner as other hospital district taxes.

(4) If the calculated percentage of qualified electors voting in the election is less than thirty percent (30%), the additional levy shall be deemed to have been rejected.

Section 2. There is a new section to be numbered 16-4309.2, R.C.M. 1947, which reads as follows:

16-4309.2. **Notice — conduct of election — returns.** Notice of the election, clearly stating the amount and the purpose of the additional levy, must be given and the election held and conducted, and the returns made in all respects in the manner prescribed by law with regard to the submission of questions to the electors under the general election laws.

Approved March 11, 1974

## CHAPTER NO. 133

AN ACT TO AMEND SECTION 81-436, R.C.M. 1947, TO PROVIDE FOR THE DEPOSIT REQUIRED FOR BIDS ON STATE GRAZING LEASES.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 81-436, R.C.M. 1947, is amended to read as follows:

"81-436. **Deposit required with bid for lease— retention or return —forfeiture.** A person bidding for the lease of state lands shall deposit with the department, as evidence of good faith, a certified check, cashier's check, or money order in an amount equal to *twenty percent (20%)* of the annual rental bid in the case of grazing land, and an amount equal to one dollar (\$1) per acre for each acre of agricultural land contained in the lease in the case of agricultural land on which the bid is made on a crop share basis. The department shall retain the deposit of the successful bidder and apply it on the rental for the first year of the lease only, and return any balance of the deposit at the end of the first year to the successful bidder, and return the deposits of the unsuccessful bidders. If the successful bidder fails to execute the lease for any reason, his deposit shall be forfeited and deposited by the department to the credit of the proper interest and income account in the federal and private revenue fund."

Approved March 11, 1974

## CHAPTER NO. 134

AN ACT TO AMEND SECTION 81-402, R.C.M. 1947, TO EMPOWER

THE STATE BOARD OF LAND COMMISSIONERS TO APPROVE SPECIAL CROP SHARE RENTALS FOR HIGH PRODUCTION COST CROPS; AND PROVIDING THAT THIS POWER MAY NOT BE DELEGATED TO THE DEPARTMENT OF STATE LANDS.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 81-402, R.C.M. 1947, is amended to read as follows:

"81-402. **Lease of state lands—crop share rental basis used.** (1) Under the general direction and control of the board of land commissioners, the department shall lease all agricultural and grazing lands and all town and city lots open to leasing upon proper application. As to agricultural lands, all leases shall be continued or made upon a crop share rental basis of not less than one-fourth ( $\frac{1}{4}$ ) of the annual crops to the state, or the usual landlord's share prevailing in the district, whichever is greater. *The board may, however, approve special crop share rentals of less than one-fourth ( $\frac{1}{4}$ ) for high production cost crops such as, but not limited to, potatoes and sugar beets. The board may not delegate the authority to approve such special crop share rentals.*

(2) In unusual cases the department may authorize a lease upon other basis than crop share, but in these unusual cases the rental shall at least equal the value of the usual landlord's share prevailing in the district, and the department shall set forth in the records the unusual conditions of the case and the rental to be charged.

(3) The rental rate for leasing all state grazing lands shall be based upon the appraised animal-unit-month carrying capacity of the land as provided in section 81-433. As to town and city lots owned by the state, the fair rental value thereof shall be determined from time to time by the department with the approval of the board and record made thereof, and such town or city property may be leased at its current appraised rental value for terms not to exceed five (5) years.

(4) All leases of agricultural or grazing lands, or town or city lots, shall be upon condition that the board may, in its discretion, offer the land for sale at any regular public sale of state lands held in the county where the land is situated, upon the same terms, and in the same manner as land not under lease."

Approved March 11, 1974

## CHAPTER NO. 135

AN ACT TO PROVIDE FOR THE LEASE TERMS OF STATE LANDS FOR USES OTHER THAN AGRICULTURE, GRAZING, TIMBER HARVEST, OR MINERAL PRODUCTION AND TO AMEND SECTION 81-402, 81-407 AND 81-408, R.C.M. 1947, TO PROVIDE FOR LEASE TERMS ON CITY AND TOWN LOTS.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is a new section to be numbered 81-103.1, R.C.M. 1947, which reads as follows:

**81-103.1. Commissioners authorized to lease lands.** The board of land commissioners is authorized to lease state lands for uses other than agriculture, grazing, timber harvest or mineral production under such terms and conditions which best meet the duties of the board as specified in section 81-103, provided however that the lease period for such leases, except for power and school site leases, may not be for longer than twenty-five (25) years.

Section 2. Section 81-402, R.C.M. 1947, is amended to read as follows:

**"81-402. Lease of state lands — crop share rental basis used.** (1) Under the general direction and control of the board of land commissioners, the department shall lease all agricultural and grazing lands and all town and city lots open to leasing upon proper application. As to agricultural lands, all leases shall be continued or made upon a crop share rental basis of not less than one-fourth ( $\frac{1}{4}$ ) of the annual crops to the state, or the usual landlord's share prevailing in the district, whichever is greater.

(2) In unusual cases the department may authorize a lease upon other basis than crop share, but in these unusual cases the rental shall at least equal the value of the usual landlord's share prevailing in the district, and the department shall set forth in the records the unusual conditions of the case and the rental to be charged.

(3) The rental rate for leasing all state grazing lands shall be based upon the appraised animal-unit-month carrying capacity of the land as provided in section 81-433. As to town and city lots owned by the state, the fair rental value thereof shall be determined from time to time by the department with the approval of the board and a record made thereof, and such town or city property may be leased at its current appraised rental value for terms not to exceed *twenty-five (25) years*.

(4) All leases of agricultural or grazing lands, or town or city lots, shall be upon condition that the board may, in its discretion, offer the land for sale at any regular public sale of state lands held in the county where the land is situated, upon the same terms, and in the same manner as land not under lease."

Section 3. Section 81-407, R.C.M. 1947, is amended to read as follows:

**"81-407. Who may lease — how much and for what length of time.** No person may lease state lands, except one who is the head of a family, unless he has attained the age of eighteen (18) years. Any such person and any association, company, or corporation authorized to hold lands under lease may lease state lands, and may hold more than one (1) lease to state lands, and there may be included under one (1) lease tracts of lands embracing more than one (1) section. No lease to agricultural or grazing lands may be for a period other than five (5) or ten (10) years. Leases for city and town lots may not exceed *twenty-five (25) years*. When

a lease expires or is canceled the department shall immediately notify the holder of the lease and all persons who have expressed an interest in leasing the land during, or immediately preceding, the term of the expired or canceled lease. If the legislature raises the rentals for state grazing lands during the term of any leases of grazing land which are not issued as a result of competitive bidding, the lessee shall, for the years after the increase becomes effective, pay the increased rental, and the terms of grazing leases shall so provide."

Section 4. Section 81-408, R.C.M. 1947, is amended to read as follows:

"81-408. **Lease expiration dates.** All leases for agricultural lands, grazing lands hereafter issued no matter on what date issued, shall expire on February 28 within ten (10) years from the date on which the lease becomes effective."

Approved March 11, 1974

## CHAPTER NO. 136

AN ACT TO AMEND SECTION 81-1702.1, R.C.M. 1947, TO PROVIDE FOR THE PAYMENT DATE OF RENTALS ON STATE OIL AND GAS LEASES.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 81-1702.1, R.C.M. 1947, is amended to read as follows:

"81-1702.1. **Rentals — filing fee — contiguity.** (1) The minimum annual money rentals to be paid to the state for oil and gas leases issued before March 3, 1955, shall be seventy-five cents (\$.75) for each acre of land leased; however, this rental shall in no case be less than fifty dollars (\$50) a year.

(2) The annual money rentals to be paid to the state for oil and gas leases issued on and after March 3, 1955, shall be one dollar (\$1) for each acre of land leased, except that in addition to the sum of one dollar (\$1) per acre, the rental for the first year of the lease shall also include any sum in excess of one dollar (\$1) per acre offered and accepted for the first year's rental; however, this rental shall in no case be less than fifty dollars (\$50) a year.

(3) The first year's rental shall be paid before the issuance of the lease. The rentals for each subsequent year of the lease shall be due and payable before the beginning of such subsequent year, and upon failure to make such payment the lease terminates.

(4) The lands shall be leased in as compact bodies as the form and areas of the tracts held by the state and offered for lease will permit. No lease may embrace noncontiguous subdivisions of lands unless the subdivisions are within an area comprising not more than one (1) square mile.

(5) In all cases where an oil and gas lease issued after March 3, 1955, is surrendered for cancellation before its expiration, relinquished to the state, or canceled through proceedings on the part of the state, no new lease on the lands under such lease may be issued within thirty (30) days from the date of cancellation or relinquishing. This restriction does not apply, however, in cases of bona fide assignment."

Approved March 11, 1974

## CHAPTER NO. 137

AN ACT TO AMEND SECTION 25-102, R.C.M. 1947, TO EXCLUDE EXTRADITIONS FROM THOSE CLASSES OF DOCUMENTS FOR WHICH A FIVE DOLLAR (\$5) FEE MUST BE PAID TO THE SECRETARY OF STATE BEFORE A REQUEST FOR EXTRADITION CAN BE HONORED; AND PROVIDING FOR AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 25-102, R.C.M. 1947, is amended to read as follows:

"25-102. **Fees of secretary of state.** The secretary of state, for services performed in his office, must charge and collect the following fees:

1. For each copy of any law, resolution or record or other document or paper on file in his office, except corporate papers, forty cents (\$.40) per folio, or, if the copy is made by any process of reproduction by photographic, photostatic or similar process, the fee shall be fifty cents (\$.50) per page or fraction thereof.

2. For affixing certificate and seal, two dollars (\$2).

3. For receiving and recording each official bond, ten dollars (\$10).

4. For each commission or other document, signed by the governor, and attested by the secretary of state (pardon, military commissions *and extraditions* excepted), five dollars (\$5).

5. For filing each trade-mark, five dollars (\$5); for filing and recording each assignment of a trade-mark, five dollars (\$5); and for issuing each certificate of record, five dollars (\$5).

6. For filing and recording miscellaneous papers, records, or other documents, five dollars (\$5).

7. For filing and recording any other paper not otherwise herein provided for, five dollars (\$5). When a copy of any law, resolution or record or other document or paper on file in the office of the secretary of state is presented for comparison and certification, ten cents (\$.10) per folio must be charged and collected for proofreading the same. That no member of the legislative assembly, or state or county officer, can be charged for

any search relative to matters appertaining to the duties of his office; nor must he be charged any fee for a certified copy of any law or resolution passed by the legislative assembly relative to his official duties. Fees must be collected in advance, and when collected by the secretary of state, must be paid to the state treasurer at the end of each quarter, as provided in the constitution.

8. For filing and recording any paper, record, or other document or other than a standard form when recommended by the secretary of state, five dollars (\$5)."

Section 2. This act shall be effective upon passage and approval.

Approved March 11, 1974

## CHAPTER NO. 138

### AN ACT AMENDING SECTION 11-2209, R.C.M. 1947, TO ALLOW BIDS FOR SPECIAL IMPROVEMENTS TO BE OPENED OTHER THAN AT CITY COUNCIL MEETINGS.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 11-2209, R.C.M. 1947, is amended to read as follows:

"11-2209. **Bid for work and award of contract.** (1) Notice inviting proposals, and referring to the specifications on file, shall be published at least twice in a daily, semiweekly, or weekly newspaper, published and circulated in said city, designated by the council for that purpose, and in case there is no newspaper published in said city, then it shall be posted in at least three (3) public places.

The city council may call for bids or proposals for several kinds and types of materials for any improvements proposed to be made under sections 11-2201 to 11-2243 of this code, reserving the right to select the kind or type of material to be used in making any such improvements, after the bids or proposals therefor shall have been opened, examined, and declared.

(2) The time fixed for the opening of bids shall be not less than ten (10) days from the time of the final publication of said notice. All proposals or bids offered shall be accompanied by a check payable to the city, certified by a responsible bank for an amount which shall not be less than ten per centum (10%) of the aggregate of the proposal. Said proposals or bids shall be delivered to the clerk of the said city council, provided, however, that no proposal or bids shall be considered unless accompanied by said check. *The bids shall be opened in public at a time and place to be designated by the city council at the previous council meeting.* The city council may reject any and all proposals or bids should it deem this for the public good, and also the bid of any party who has been delinquent

or unfaithful in any former contract with the municipality, and shall reject all proposals or bids other than the lowest regular proposal or bid of any responsible bidder, and may award the contract for said work or improvement to the lowest responsible bidder at the prices named in his bid.

(3) If the bids are rejected, or no bids are received, the city council may, at any time within two (2) years thereafter, and whenever and as often as the city council deems it advantageous, readvertise for proposals or bids for the performance of the work as herein provided, without further proceedings, and thereafter proceed in the manner in this section provided, and shall thereupon return to the proper parties the checks corresponding to the bids so rejected. But the checks accompanying such accepted proposals or bids shall be held by the city clerk of said city until the contract for doing said work, as hereinafter provided, has been entered into, either by said lowest bidder, or by the owners of over fifty per centum (50%) of the frontage, whereupon said certified check shall be returned to said bidder. But if said bidder fails, neglects, or refuses to enter into the contract to perform said work or improvements, as hereinafter provided, then the certified check accompanying his bid, and the amount therein mentioned, shall be declared to be forfeited to said city, and shall be collected by it and paid into the general fund. The provisions hereof shall be applicable to all special improvement districts created within one (1) year preceding the passage and approval of this act."

Approved March 11, 1974

## CHAPTER NO. 139

AN ACT TO AMEND SECTION 8-812, R.C.M. 1947, TO REQUIRE CARRIERS TO ACKNOWLEDGE RECEIPT OF CLAIMS FOR LOSSES, INVESTIGATE CLAIMS FOR LOSSES PROMPTLY AND DISPOSE OF THEM WITHIN A SPECIFIED TIME OR PROVIDE EXPLANATION FOR DELAY.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 8-812, R.C.M. 1947, is amended to read as follows:

"8-812. **Liability of inland carriers for loss.** Unless the consignor accompanies the freight and retains exclusive control thereof, an inland common carrier of property is liable, from the time that he accepts until he relieves himself from liability, pursuant to sections 8-414 to 8-417, for the loss or injury thereof from any cause whatever, except:

- (1) An inherent defect, vice, weakness, or a spontaneous action of the property itself;
- (2) The act of a public enemy of the United States, or of this state;
- (3) The act of the law;
- (4) An irresistible superhuman cause, or,



(5) *The act or default of the shipper or owner or natural shrinkage.*

*Claimant within fifteen (15) days after delivery must call for an inspection upon any damaged shipment and carrier must make such inspection within five (5) working days thereafter.*

*Carriers must promptly acknowledge receipt of each claim, promptly investigate each claim, and dispose of each claim within one hundred twenty (120) days from the date of receipt thereof or provide an explanation for the delay in disposition, provided that an assertion that the claim is being investigated shall not constitute sufficient explanation."*

Approved March 11, 1974

## CHAPTER NO. 140

AN ACT AMENDING SECTION 4-170, R.C.M. 1947, TO ALLOW THE PUBLICATION OR DISPLAY OF ADVERTISEMENTS CONCERNING LIQUOR IF PERMITTED BY THE REGULATIONS OF THE DEPARTMENT OF REVENUE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 4-170, R.C.M. 1947, is amended to read as follows:

**"4-170. Unlawful to canvass for orders for sale or purchase of liquor — advertising liquor or beer, when prohibited — exceptions.** No person within the state shall—

(1) canvass for, receive, take or solicit orders for the purchase or sale of any spirits or wines or act as agent or intermediary for the sale or purchase of any spirits or wines or hold out himself as such agent or intermediary;

(1a) canvass for or solicit orders for the purchase or sale of any beer or malt liquor excepting in the case of beer proposed to be sold to beer licensees, club licensees duly authorized to sell beer under the provisions of this act;

(2) exhibit, publish, or display, or permit to be exhibited, published or displayed, any form of advertisement, or any other announcement, publication or price list of or concerning liquor or where or from whom the same may be had, obtained or purchased, unless permitted so to do by the regulations of the department of revenue, and then only in accordance with such regulations;

(3) This section shall not apply—

(a) to the department of revenue, nor to any act of the department, nor to any state liquor store; nor

(b) to the receipt or transmission of a telegram or letter by any telegraph agent or operator or post-office employee in the ordinary course of his employment as such agent, operator or employee."

Approved March 11, 1974

## CHAPTER NO. 141

AN ACT TO REPEAL SECTION 84-429.8, R.C.M. 1947, WHICH

AUTHORIZES AN ANNUAL TAX FOR THE PROPERTY TAX ADMINISTRATION FUND; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 84-429.8, R.C.M. 1947, is repealed.

Section 2. This act is effective upon passage and approval and shall effect all taxes levied and assessed after January 1, 1974.

Approved March 11, 1974

## CHAPTER NO. 142

AN ACT TO REPEAL SECTION 60-225, R.C.M. 1947, RELATING TO PETROLEUM DEALER PLACE OF BUSINESS LICENSE FEES.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 60-225, R.C.M. 1947, is repealed.

Approved March 11, 1974

## CHAPTER NO. 143

AN ACT TO REMOVE THE MINIMUM LIMITS OF COVERAGE REQUIRED FOR CASUALTY AND LIABILITY POLICIES PROCURED BY A GOVERNMENTAL ENTITY; AMENDING SECTION 82-4303, R.C.M. 1947; AND REPEALING SECTION 82-4307.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 82-4303, R.C.M. 1947, is amended to read as follows:

**"82-4303. Comprehensive insurance plan for state—risks insured—deductible insurance.** The department of administration shall be responsible for the acquisition and administration of all the insurance *purchased for protection* of the state, as defined herein.

The department of administration shall, after consultation with the departments, agencies, commissions, and other instrumentalities of the state, provide a comprehensive insurance plan for the state providing insurance coverage to the state in amounts *determined and set by the department of administration* and shall have the authority to purchase, renew, cancel and modify all policies according to the comprehensive

insurance plan. The plan may include property, casualty, liability, crime and fidelity, and any such other policies of insurance as the department of administration may from time to time deem reasonable and prudent.

The department of administration may in its discretion elect to utilize a deductible insurance plan, either wholly or in part. Such a plan shall never have a deductible amount in excess of twenty-five thousand dollars (\$25,000) per occurrence, and shall contain provisions allowing for an aggregate deductible amount not to exceed two hundred fifty thousand dollars (\$250,000) annually under each type of insurance as enumerated in the preceding paragraph."

Section 2. Section 82-4307, R.C.M. 1947, is repealed.

Approved March 11, 1974

## CHAPTER NO. 144

AN ACT PROVIDING THE INDIVIDUAL CLAIMANT ACCESS TO HIS OWN WORK AND WAGE EARNINGS RECORDS PRIOR TO A HEARING TO FACILITATE UNEMPLOYMENT OR WORKERS' COMPENSATION CLAIMS; AMENDING SECTION 87-124, R.C.M. 1947.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 87-124, R.C.M. 1947, is amended to read as follows:

"87-124. **Records and reports.** Each employing unit shall keep true and accurate work records, containing such information as the commission may prescribe. *Those* records shall be open to inspection and shall be subject to being copied by the commission or its authorized representative at any reasonable time and as often as may be necessary. The commission and the chairman of any appeal tribunal may require from any employing unit any sworn or unsworn reports with respect to persons employed by it which the commission *considers* necessary to the effective administration of this act. Information thus obtained or obtained from any individual *under* this act shall, except to the individual claimant to the extent necessary for the proper presentation of a claim, be held confidential and shall not be published or be open to public inspection *except* to public employees in the performance of their public duties in any manner revealing the individual's or employing unit's identity, but any claimant or his legal representative at a hearing before the commission or appeal tribunal shall be supplied with information from *the* records to the extent necessary for the proper presentation of his claim. Any employee or member of the commission who violates any provision of this section shall be fined not less than twenty dollars (\$20) nor more than two hundred dollars (\$200), or imprisoned for not longer than *ninety* (90) days, or both."

Approved March 11, 1974

## CHAPTER NO. 145

AN ACT AMENDING SECTION 8-102, R.C.M. 1947, AS AMENDED BY

CHAPTER 172, LAWS OF 1973, PROVIDING THAT THE PROVISIONS OF SAID SECTION REQUIRING CERTAIN CLASS C MOTOR CARRIERS TO OPERATE UNDER A CLASS B MOTOR CARRIER CERTIFICATE SHALL NOT APPLY TO CERTAIN MOTOR CARRIERS WHOSE AUTHORITY IS CONFINED BY CERTIFICATE TO TRANSPORTATION WITHIN A DISTANCE OF FIFTY (50) MILES OR LESS FROM A PARTICULAR LOCATION; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 8-102, R.C.M. 1947, is amended to read as follows:

**"8-102. Classification of motor carriers — operation according to provisions of act required.** (a) Motor carriers are hereby divided into three (3) classes for the purposes of this act, to be known as:

Class A motor carriers,

Class B motor carriers,

Class C motor carriers.

Class A motor carriers shall embrace all motor carriers operating between fixed termini or over a regular route, under regular rates or charges, based upon either station-to-station rates or upon a mileage rate or scale.

Class B motor carriers shall embrace all motor carriers operating under regular rates or charges based upon either station-to-station rates or upon a mileage rate or scale, and not between fixed termini or over a regular route.

Class C motor carriers shall embrace all motor carriers operating motor vehicles for distributing, delivering or collecting wares, merchandise, or commodities, or transporting persons, where the remuneration is fixed in and the transportation service furnished under a contract, charter, agreement or undertaking. Such class C motor carriers distributing, delivering or collecting wares, merchandise or commodities, or transporting persons shall do so under six (6) contracts, charters, agreements or undertakings or less annually. Every class C motor carrier providing such transportation services by means of more than six (6) contracts, charters, agreements or undertakings shall be deemed to be providing common carriage and shall operate under a class B motor carrier certificate in lieu of such class C motor carrier certificate. All class C motor carriers must annually submit to this commission the names and addresses of all persons, firms, corporations or other legal entity with whom the said class C carrier has executed a contract, charter, agreement or undertaking for the distribution, delivery or collection of wares, merchandise or commodities, or transporting persons.

*The provisions of this section requiring certain class C motor carriers to operate under a class B motor carrier certificate and to submit an annual statement to the commission shall not apply to solid waste contrac-*

*tors, to household goods carriers as defined by the department of public service regulation, nor to any carrier whose authority is confined by certificate to transportation within a distance of fifty (50) miles or less from a particular location and that is performing pick up and delivery service under contract for one or more common carriers within that area.*

(b) It shall be unlawful for any corporation or person, its or their officers, agents, employees, or servants, to operate any motor vehicle for the transportation of persons and/or property for hire on any public highway in this state except in accordance with the provisions of this act."

Section 2. This act is effective on passage and approval.

Approved March 11, 1974

## CHAPTER NO. 146

AN ACT EXPANDING THE POSITION OF TOWN CLERK; ABOLISHING THE POSITION OF TOWN TREASURER; TRANSFERRING THE DUTIES OF A TOWN TREASURER TO THE TOWN CLERK; AND AMENDING SECTIONS 11-703, 11-731, AND 11-807, R.C.M. 1947.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 11-703, R.C.M. 1947, is amended to read as follows:

"11-703. **Officers of towns.** The officers of a town consist of one mayor and two aldermen from each ward, who must be elected by the qualified electors of the town as hereinafter provided. There may be appointed by the mayor, with the advice and consent of the council, one clerk, who may be ex officio assessor *and tax collector* and a member of the council, and one marshal, who may be ex officio street commissioner, and any other officers necessary to carry out the provisions of this title. The town council may prescribe the duties of all town officers, and fix their compensation, subject to the limitations contained in this title."

Section 2. Section 11-731, R.C.M. 1947, is amended to read as follows:

"11-731. **Salary of city clerk.** The annual salary and compensation of the city clerk must be fixed by ordinance."

Section 3. Section 11-807, R.C.M. 1947, is amended to read as follows:

"11-807. **Duties of city treasurer.** It shall be the duty of the city treasurer:

1. To receive all moneys that come to the city, either from taxation or otherwise, and to pay the same out on the warrant of the mayor, countersigned by the clerk, drawn in accordance with law.

2. To perform such duties in the collection of taxes, licenses, or assessments as are or may be prescribed by law or ordinances.

3. To present on the first Monday of each month to the council a full and detailed statement of the amounts of money belonging to the city, received by him and by him disbursed during the preceding month, and the state of each particular fund, which statement must be verified by his oath.

4. To keep the books and accounts of the city in such manner as to correctly present the condition of the finances thereof, which must always be open to the inspection of the mayor, council, or any member thereof.

5. To keep a separate account of each fund or appropriation, and the debits and credits thereof.

6. To give every person paying to him money as treasurer, a receipt therefor, specifying the date of payment, the amount, and for what paid.

7. To render at any time an account to the council, showing the money on hand and the condition of the treasury.

8. To keep a register of all warrants paid, called "The Registry Book," which must show the date, amount, and number, and the person to whom, and the fund from which the same was paid, and to deliver and file with the city clerk all vouchers, warrants, or orders paid by him.

9. To annually make out and submit to the city council, at its last meeting prior to May first, a detailed account of all receipts and expenditures during the past fiscal year, file the same with the clerk, and an abstract thereof must be published in some newspaper in the city, or, if none is published, such abstract must be posted in the room or building occupied by the council.

10. To pay out, in the order which they are registered, all warrants presented for payment, when there are funds in the treasury to pay the same.

11. To deposit all public moneys in his possession and under his control, excepting such as may be required for current business, in any solvent bank or banks located in such city, subject to national supervision or state examination, as the council shall designate, and no other, and the sums so deposited shall bear interest at the rate of two and one-half per centum per annum, payable quarter-annually."

Section 4. There is a new section to be numbered 11-805.1, R.C.M. 1947, which reads as follows:

**11-805.1. Duties of town clerk.** It shall be the duty of the town clerk:

(1) To receive all moneys that come to the town, either from taxation or otherwise, and to pay the same out on the warrant of the mayor, countersigned by the clerk, drawn in accordance with law.

(2) To perform such duties in the collection of taxes, licenses, or assessments as are or may be prescribed by law or ordinances.

(3) To present on the first Monday of each month to the council a full and detailed statement of the amounts of money belonging to the town, received by him and by him disbursed during the preceding month, and

the state of each particular fund, which statement must be verified by his oath.

(4) To keep the books and accounts of the city or town in such manner as to correctly present the condition of the finances thereof, which must always be open to the inspection of the mayor, council, or any member thereof.

(5) To keep a separate account of each fund or appropriation, and the debits and credits thereof.

(6) To give every person paying to him money as town clerk, a receipt therefor, specifying the date of payment, the amount, and for what paid.

(7) To render at any time an account to the council, showing the money on hand and the condition of the treasury.

(8) To keep a register of all warrants paid, which must show the date, amount, and number, and the person to whom, and the fund from which the same was paid.

(9) To annually make out and submit to the town council, at its last meeting prior to May first, a detailed account of all receipts and expenditures during the past fiscal year, and an abstract thereof must be published in some newspaper in the city or town, or, if none is published, such abstract must be posted in the room or building occupied by the council.

(10) To pay out, in the order which they are registered, all warrants presented for payment, when there are funds in the treasury to pay the same.

(11) To deposit all public moneys in his possession and under his control, excepting such as may be required for current business, in any solvent bank or banks located in such city or town, subject to national supervision or state examination, as the council shall designate, and no other, and the sums so deposited shall bear interest at the rate of two and one-half per centum per annum, payable quarter-annually.

(12) To attend all meetings of the council, to record and sign the proceedings thereof and all ordinances, bylaws, resolutions, and contracts passed, adopted, or entered into, and to sign, number, and keep a record of all licenses, commissions, or permits granted or authorized by the council.

(13) To enter in a book all ordinances, resolutions, and bylaws passed and adopted by the council. Such book is called "The Ordinance Book."

(14) To enter in a book kept for that purpose the date, amount, and person in whose favor and for what purpose warrants are drawn upon the town treasury.

(15) To countersign and cause to be published or posted, as provided by law, all ordinances, bylaws, or resolutions passed and adopted by the council.

(16) To file and keep all records, books, papers, or property belonging to the town, and to deliver the same to his successor when qualified.

Section 5. There is a new section to be numbered 11-805.2, R.C.M. 1947, which reads as follows:

11-805.2. **Town clerk to be treasurer.** The statutory functions and duties of a town treasurer provided in this title are transferred to the town clerk. Any reference to a town treasurer in the Revised Codes of Montana, 1947, means the town clerk.

Section 6. All statutes and sections of statutes in conflict with this act are repealed.

Section 7. The provisions of this act are severable, and if any application, part or provision is held void the decision of the court so holding shall not affect or impair any other application, part or provision of this act.

Approved March 11, 1974

## CHAPTER NO. 147

AN ACT TO CLARIFY THE ELECTION PROVISIONS CONTAINED IN SECTION 89-2330, R.C.M. 1947; AMENDING SECTION 89-2330.1, R.C.M. 1947, RELATING TO ELECTIONS IN DRAINAGE DISTRICTS; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 89-2330.1, R.C.M. 1947, is amended to read as follows:

"89-2330.1. **Taxpayers' approval required for assessments on improvements.** It shall require a vote of the persons on the assessment rolls in any existing district to make this law applicable to such districts."

Section 2. There is a new section to be numbered 89-2330.3, R.C.M. 1947, which reads as follows:

89-2330.3 **Procedures for elections in drainage districts.** The election provided for by section 89-2330.1 shall be governed by the following rules.

(1) Notice of the election shall be as provided in section 89-2303 except that the form of the ballot shall be as hereinafter provided.

(2) The manner of conducting the election shall be as provided in section 89-2304.

(3) The qualifications of electors shall be as provided in section 89-2305 except that, in addition to persons holding title, or evidence of title to lands within the district, any person as therein defined who does not own land within the district but has been assessed or will have his improvements assessed under chapter 409, Laws of 1973, or who will be assessed for benefits received, shall be entitled to one (1) vote. Commis-



sioners shall prepare a list of such persons and give them notice as provided in section 89-2303.

(4) The commissioners of any district in existence prior to the effective date of chapter 409, Laws of 1973, who wish to hold an election to determine if the district shall be governed by chapter 409, Laws of 1973, shall at any regular or special meeting adopt a resolution calling for an election to determine whether or not the voters of said district wish to be governed by chapter 409, Laws of 1973. The resolution shall contain a short summary of the changes made by chapter 409, Laws of 1973 and shall include the summary as part of the notice provided for by section 89-2303. In addition, the commission shall provide copies of chapter 409, Laws of 1973 to any person interested in obtaining a copy of the same and the notice to the persons in the district calling the election shall describe where and how copies may be obtained. The commissioners may authorize a reasonable charge for providing said copies, not to exceed twenty cents (\$.20) per page.

(5) The ballot shall include the summary as provided for in the preceding paragraph and the form of the ballot shall conform, as closely as possible, to that set forth in section 37-106.

(6) A simple majority of those who cast valid ballots shall determine the outcome of the election.

Section 3. This act is effective on its passage and approval.

Approved March 11, 1974

## CHAPTER NO. 148

AN ACT TO AMEND SECTION 59-1002, R.C.M. 1947, PROVIDING FOR ACCUMULATION OF ANNUAL VACATION LEAVE FOR PUBLIC OFFICERS AND EMPLOYEES.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 59-1002, R.C.M. 1947, is amended to read as follows:

"59-1002. **Accumulation of leave.** Annual vacation leave may be accumulated to a total not to exceed *two (2) times the maximum number of days earned annually* as of the last day of any calendar year."

Approved March 11, 1974

## CHAPTER NO. 149

AN ACT AMENDING SECTIONS 71-2001, 71-2003, 71-2004, 71-2005

AND 71-2006, R.C.M. 1947, BY TRANSFERRING THE ADMINISTRATION OF HOMES FOR THE DEVELOPMENTALLY DISABLED FROM THE DEPARTMENT OF INSTITUTIONS TO THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 71-2001, R.C.M. 1947, is amended to read as follows:

"71-2001. **Purposes.** The legislative assembly, in recognition of the wide and varied needs of developmentally disabled persons and of the desirability of meeting these needs on a community level to the fullest extent possible, and in order to reduce the need for care in existing state institutions, establishes by this act a community developmentally disabled home program to provide facilities and services for the training and treatment of the developmentally disabled in family-oriented residences and establishes a program to provide such homes."

Section 2. Section 71-2003, R.C.M. 1947, is amended to read as follows:

"71-2003. **Nonprofit corporations and associations authorized — establishment of homes by department.** (1) Nonprofit corporations or associations in any community may be formed or organized for the purposes of establishing a community home or homes for the developmentally disabled under this act and to receive services, facilities, and funds as the department of *social and rehabilitation services* and other governmental units may be authorized by law to provide.

(2) The department of *social and rehabilitation services* may also establish a community home or homes for the developmentally disabled under this act and receive services, facilities, and funds as the department of *social and rehabilitation services* and other governmental units may be authorized by law to provide."

Section 3. Section 71-2004, R.C.M. 1947, is amended to read as follows:

"71-2004. **Department contracts with nonprofit corporations — governmental units providing for community homes.** (1) The department of *social and rehabilitation services* shall be authorized to contract with nonprofit corporations or associations or *any other home licensed by the department of social and rehabilitation services* to provide facilities and services for the developmentally disabled in community homes for the developmentally disabled and is authorized to expend moneys appropriated or available for that purpose.

(2) Governmental units, including but not limited to counties, municipalities, school districts, or state institutions of higher learning are authorized, at their own expense, to provide funds, materials, facilities, and services for community homes for the developmentally disabled."

Section 4. Section 71-2005, R.C.M. 1947, is amended to read as follows:

"71-2005. **Local control of homes subject to departmental rules.** Community homes for the developmentally disabled *may* be under local control, and the nonprofit corporations or associations operating said community homes are authorized to establish homes and programs they believe in the best interest of their home; provided, however that the director of the department of *social and rehabilitation services* shall adopt reasonable rules, regulations, and standards to carry out the administration and purposes of this act."

Section 5. Section 71-2006, R.C.M. 1947, is amended to read as follows:

"71-2006. **Federal aid.** The department of *social and rehabilitation services* is authorized to apply for and receive federal aid money or other assistance which may be available for programs in the nature of the program created by this act."

Approved March 11, 1974

## CHAPTER NO. 150

AN ACT TO AMEND SECTION 69-5201, R.C.M. 1947, TO DEFINE "LONG-TERM CARE FACILITY" AS A PLACE WHICH PROVIDES PERSONAL CARE TO MORE THAN THREE (3) PERSONS, RATHER THAN MORE THAN TWO (2) PERSONS, AS NOW DEFINED.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 69-5201, R.C.M. 1947, is amended to read as follows:

"69-5201. **Definitions.** As used in this chapter, unless the context clearly indicates otherwise:

(1) "Hospital" means any health care facility licensed by the department of health and environmental sciences to provide, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, and care of injured, disabled, or sick persons. Services provided may or may not include obstetrical care. A health care facility in order to be licensed as a hospital must have an organized medical staff; shall provide twenty-four (24) hour nursing care by licensed professional nurses and shall be in compliance with the regulations for licensed hospitals as promulgated and adopted by the state department of health and environmental sciences.

(2) "Hospital related facility" means a facility licensed by the department of health and environmental sciences to provide any or all of the following: diagnosis; treatment; medical or nursing care or medically related rehabilitation services. Such facilities include, but are not limited to, outpatient facilities, public health centers, rehabilitation facilities, long-term care facilities, infirmaries, mental health and mental retardation facilities.

tion institutions, alcohol and drug dependency centers and half-way houses. A health care facility in order to be licensed as a "hospital related facility" shall be in compliance with the regulations, for the specific category of facility, as promulgated and adopted by the state department of health and environmental sciences.

(a) "Outpatient facility" means a place, located in or apart from a hospital, which provides to ambulatory patients not requiring hospitalization the services of persons licensed to practice medicine or dentistry in the state of Montana, and which makes provision for its patients to receive a reasonably full range of physical or mental diagnostic and treatment services.

(i) "Outpatient facility - A" is operated as an organizational component of a hospital and may establish observation beds. "Observation beds" are those beds established for use by an outpatient recovering from minor surgery or other treatment and will be occupied for a period of time not in excess of six (6) hours.

(ii) "Outpatient facility - B" is operated apart from a hospital and may not include observation beds.

(b) "Public health centers" means a publicly owned facility utilized by a local health unit for the provision of public health services, including related public facilities such as laboratories, clinics, and administrative offices operated in connection with public health centers.

(c) "Rehabilitation facility" means a facility providing community service which is operated for the primary purpose of assisting in the rehabilitation of disabled persons through an integrated program under competent professional supervision including: medical services and evaluation; and psychological, social and vocational services and evaluation.

(d) "Long-term care facility" means a place which provides skilled nursing care to a total of two (2) or more persons or personal care to more than *three (3)* persons, who by reason of illness or disability are unable to properly care for themselves and are not related to the owner or administrator by blood or marriage, and may be defined as follows:

(i) "Skilled nursing facilities" are establishments furnishing continuous skilled nursing care and related services twenty-four (24) hours a day.

(ii) "Intermediate care facilities - A" are establishments furnishing limited skilled nursing care and personal care.

(iii) "Intermediate care facilities - B" are establishments providing only personal care and services to residents.

(iv) "Combination facilities" are establishments providing two (2) or more of the following services: skilled nursing care and intermediate care - A and/or B.

(v) Hotels, motels, boarding houses, rooming houses, or similar accommodations providing for transients, students, or persons not requiring institutional health care are not considered to be long-term care facilities.

(e) "Infirmmary" means a facility located in a university, college, government institution, or industry, for the treatment of the sick or injured.

(i) "Infirmmary - A" provides outpatient and inpatient care.

(ii) "Infirmmary - B" provides outpatient care only.

(3) "Person" means any individual, firm, partnership, association or corporation, or governmental unit.

(4) "Governmental unit" means the state, a state agency, any county, municipality, political subdivision of the state or an agency of any political subdivision.

(5) "Resident" means a person who is in a long-term care facility as a patient or for personal care.

(6) "Health care facility" means a hospital, hospital related facility or long-term care facility."

Approved March 11, 1974

## CHAPTER NO. 151

AN ACT AMENDING SECTION 75-6122, R.C.M. 1947, TO PROVIDE THAT PROVISIONS CONTAINED IN INDIVIDUAL TEACHER CONTRACTS SHALL BE CONSISTENT WITH THE PROVISIONS OF THE NEGOTIATED AGREEMENT.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 75-6122, R.C.M. 1947, is amended to read as follows:

"75-6122. **Ratification of agreements.** All professional negotiation agreements reduced to writing and executed by an employer and the representative of teachers must be ratified by a majority of the teachers in the appropriate unit before becoming binding upon the parties. If a professional negotiation agreement is executed by a professional negotiation agent of the employer it must be ratified by a majority of the board of the employer.

*Any individual contract between the board and an individual teacher shall be subject to and consistent with the terms and conditions of the professional negotiations agreement involving that appropriate unit of which the teacher is a member. If an individual contract contains any language inconsistent with the professional negotiations agreement, the professional negotiations agreement during its duration shall be controlling."*

Approved March 11, 1974

## CHAPTER NO. 152

AN ACT AMENDING SECTION 4-169, R.C.M. 1947, TO REMOVE

ARCHAIC LANGUAGE NO LONGER APPLICABLE REGARDING  
LIQUOR IN HOTELS.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 4-169, R.C.M. 1947, is amended to read as follows:

"4-169. **Liquor in hotels — restrictions on.** Except in the case of *liquor* or beer kept or consumed in premises for which a license has been granted, under the law, and which form a part of a hotel, no person—

(a) shall keep or consume liquor in any part of a hotel other than a private guest room;

(b) shall keep or have any liquor in any room in a hotel unless he is a bona fide guest of the hotel and is duly registered in the office of the hotel as an occupant of that room."

Approved March 11, 1974

## CHAPTER NO. 153

AN ACT AMENDING SECTION 66-3102, R.C.M. 1947, TO INCREASE  
THE TERM OF OFFICE FOR MEMBERS OF THE BOARD OF NURS-  
ING HOME ADMINISTRATORS FROM THREE (3) YEARS TO FIVE  
(5) YEARS.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 66-3102, R.C.M. 1947, is amended to read as follows:

"66-3102. **Composition of the board.** There is hereby created the board of nursing home administrators which shall consist of five (5) voting members. No more than two (2) of these members shall be nursing home administrators. The other three (3) members shall be representatives of professions or institutions concerned with the care of chronically ill and infirm aged patients, but no two (2) of the latter shall be from the same profession and none may have a financial interest in any nursing home. The director of the department of health and environmental sciences, or his designee, and the director of the department of social and rehabilitation services, or his designee, shall serve ex officio without the power to vote as members of such board. The terms of all appointive members shall be *five (5) years*, and they shall serve staggered terms. The appointees shall be selected from a list of three (3) nominees submitted for each appointee, to the governor by the board of directors of the Montana nursing home association, inc.

Any vacancy occurring in the position of an appointive member shall be filled by the governor for the unexpired term, from a list of three (3)

names submitted to the governor by the board of directors of the Montana nursing home association, inc. Appointive members may be removed by the governor for cause after due notice and hearing. No person shall be eligible for appointment as a nursing home administrator member unless he is the holder of a license as a nursing home administrator."

Approved March 11, 1974

### CHAPTER NO. 154

AN ACT PROVIDING THAT PUBLIC EMPLOYEES CALLED FOR JURY DUTY MAY TAKE LEAVE WITH PAY, LESS THE AMOUNT OF THE JUROR FEES RECEIVED; AMENDING SECTION 59-1010, R.C.M. 1947; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 59-1010, R.C.M. 1947, is amended to read as follows:

"59-1010. **Jury duty — service as witness.** (1) Each employee of the state or any political subdivision thereof who is under proper summons as a juror shall collect all fees and allowances payable as a result of the service and forward the fees to the appropriate accounting office. Juror fees shall be applied against the amount due the employee from his employer. However, if an employee elects to charge his juror time off against his annual leave he shall not be required to remit his juror fees to his employer. In no instance is an employee required to remit to his employer any expense or mileage allowance paid him by the court.

(2) An employee subpoenaed to serve as a witness shall collect all fees and allowances payable as a result of the service and forward the fees to the appropriate accounting office. Witness fees shall be applied against the amount due the employee from his employer. However, if an employee elects to charge his witness time off against his annual leave he shall not be required to remit his witness fees to his employer. In no instance is an employee required to remit to his employer any expense or mileage allowances paid him by the court.

(3) Employers may request the court to excuse their employees from jury duty if they are needed for the proper operation of a unit of state or local government.

(4) The department of administration of the state of Montana or the administrative office of any city or county thereof shall issue the necessary regulations to implement this act."

Section 2. This act shall be effective on passage and approval.

Approved March 11, 1974

### CHAPTER NO. 155

AN ACT CORRECTING NUMBERING ERRORS BY AMENDING SECTION 75-6509, R.C.M. 1947.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 75-6509, R.C.M. 1947, is amended to read as follows:

**"75-6509. Consolidation or annexation election with assumption of bonded indebtedness.** A consolidation election involving the mutual assumption of bonded indebtedness by the elementary districts to be consolidated, as prescribed in section 75-6506, or an annexation election involving the joint assumption of bonded indebtedness by the elementary district to be annexed, as prescribed in section 75-6508, shall comply with the following procedures in addition to those prescribed by this Title for other school elections:

(1) In a consolidation election the ballots shall read, after stating the consolidation proposition, "FOR consolidation with assumption of bonded indebtedness" and "AGAINST consolidation with assumption of bonded indebtedness."

(2) In an annexation election the ballots shall read, after stating the annexation proposition, "FOR annexation with assumption of bonded indebtedness" and "AGAINST annexation with assumption of bonded indebtedness."

(3) Any elector qualified to vote under the provisions of section 75-6410 may vote.

(4) When the trustees in each elementary district conducting an election canvass the vote under the provisions of section 75-6423, they shall decide according to the following procedure, if the proposition has been approved:

(a) Determine if a sufficient number of the qualified electors of the district have voted to validate the election and have voted to approve the election proposition in the same manner required for bond elections by section 75-7117; and

(b) When the proposition is approved under subsection (4) (a), determine the number of votes "FOR" and "AGAINST" the proposition. The proposition shall be approved in the district if a majority of those voting approve the proposition. If the proposition is disapproved under either the provisions of subsection (4) (a) or (4) (b), the proposition shall be disapproved in the district."

Approved March 11, 1974

## CHAPTER NO. 156

### AN ACT RELATING TO OBTAINING COMMUNICATION SERVICES WITH INTENT TO DEFRAUD.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is a new section to be numbered 94-6-304.1, R.C.M. 1947, which reads as follows:



**94-6-304.1. Obtaining communication services with intent to defraud.** In a prosecution under section 94-6-304 for theft of telephone, telegraph, or cable television services, the element of deception is established by proof that the defendant obtained such services by any of the following means:

1. by use of a code, prearranged scheme, or other similar stratagem or device whereby said person, in effect, sends or receives information, or,

2. by installing, rearranging, or tampering with any facilities or equipment, whether physically, inductively, acoustically, electronically, or,

3. by any other trick, stratagem, impersonation, false pretense, false representation, false statement, contrivance, device, or means, or,

4. by making, assembling, or possessing any instrument, apparatus, equipment or device, or the plans or instructions for the making or assembling of any instrument, apparatus, equipment or device which is designed, adapted or otherwise intended to be used to avoid the lawful charge, in whole or in part, for any telecommunications service by concealing the existence or place of origin or destination of any telecommunications, or

5. by publishing the number or code of an existing, canceled, revoked, expired or nonexistent credit card or the numbering or coding which is employed in the issuance of credit cards, with the intent that it will be used to avoid the payment of lawful telecommunications charges, or by publishing, advertising, selling, giving, or otherwise transferring to another, plans or instructions for the making or assembling of any apparatus, instrument, equipment, or device such as described in subparagraph 4 with the intent that such will be used or with the knowledge or reason to believe that such will be used to avoid the payment of lawful telecommunication charges. For the purpose of this subparagraph, the term "publication" means the communication of information to any one or more persons, either orally, in person, or by telephone, radio, or television, or in a writing of any kind, including, but not limited to, a letter or memorandum, circular or handbill, newspaper or magazine article or book.

Approved March 11, 1974

## CHAPTER NO. 157

**AN ACT TO AMEND SECTION 75-6104, R.C.M. 1947, RELATING TO THE NOTICE REQUIREMENTS FOR TERMINATION OF TENURED TEACHERS.**

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 75-6104, R.C.M. 1947, is amended to read as follows:

"75-6104. **Termination of tenure teacher services.** Whenever the trustees of any district resolve to terminate the services of a tenure teacher under the provisions of subsection (1) of section 75-6103, they shall notify such teacher in writing *by registered letter or by personal notification for which a signed receipt is returned* before the first day of April of such termination. *Such notification shall include a printed copy of section 75-6104, R.C.M. 1947, for the teacher's information.* Any tenure teacher who receives a notice of termination may request, in writing ten (10) days after the receipt of such notice, a written statement declaring clearly and explicitly the specific reason or reasons for the termination of his services, and the trustees shall supply such statement within ten (10) days after the request. Within ten (10) days after the tenure teacher receives the statement of reasons for termination, he may request in writing a hearing before the trustees to reconsider their termination action. When a hearing is requested, the trustees shall conduct such a hearing and reconsider their termination action within ten (10) days after the receipt of the request for a hearing. If the trustees affirm their decision to terminate the teacher's employment, the tenure teacher may appeal their decision to the county superintendent and, subsequently, either the teacher or the trustees may appeal to the superintendent of public instruction under the provision for the appeal of controversies in this Title."

Approved March 11, 1974

## CHAPTER NO. 158

AN ACT ABOLISHING THE OLD BOARD OF PARDONS; AND  
REPEALING SECTION 82-903, R.C.M. 1947.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 82-903, R.C.M. 1947, is repealed.

Approved March 11, 1974

## CHAPTER NO. 159

AN ACT AMENDING SECTION 75-7406, R.C.M. 1947, TO DELETE  
VETERANS' DAY AS A SCHOOL HOLIDAY.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 75-7406, R.C.M. 1947, is amended to read as follows:

"75-7406. **School holidays.** Pupil instruction and pupil-instruction-related days shall not be conducted on the following holidays:

- (1) New Year's day (January 1),
- (2) Memorial day (last Monday in May),
- (3) Independence day (July 4),
- (4) Labor day (first Monday in September),
- (5) Thanksgiving day (fourth Thursday in November),
- (6) Christmas day (December 25),

(7) State and national election days when the school building is used as a polling place and the conduct of school would interfere with the election process at the polling place. When these holidays fall on Saturday or Sunday, the preceding Friday or the succeeding Monday shall not be a school holiday."

Approved March 11, 1974

## CHAPTER NO. 160

AN ACT AMENDING SECTIONS 82-2701, 82-2702 AND 82-2703, R.C.M. 1947; TO QUALIFY LANDLESS INDIANS FOR PARTICIPATION IN FEDERAL PROGRAMS IN CONFORMATION WITH FEDERAL LAW; PROVIDING THAT THE INDIAN COORDINATOR BE AN INDIAN AND SERVE AT THE PLEASURE OF THE GOVERNOR; AND DELETING OBSOLETE LANGUAGE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 82-2701, R.C.M. 1947, is amended to read as follows:

"82-2701. **Legislative policy.** Whereas, a considerable portion of the citizens of the state of Montana are members of the Indian race, and,

Whereas, in the course of the past eighty years these Indian citizens of the state of Montana have been driven from their native valleys and plains and are at present living and residing upon reservations set apart for such purposes by the United States of America, and by virtue of *that* isolation and *of* supervision by the federal government, great problems of economic and social significance have arisen and presently exist, and that no suitable progress has been made to solve such problems by reason of the fact that the Indians and those who are attempting to aid them in the solution of their problems have never been able to present a co-ordinated and united effort in solving such problems, and

Whereas, it is hereby declared that it is the legislative policy of this state that the best interests of the Indians will be served by the fostering of a program which is designed to establish and place our Indian citizens in a position to take their rightful place in our society, and assume the rights, duties and privileges of full citizenship *and as Indians*, it is therefore necessary that a state office of the co-ordinator of Indian affairs be established so that the problems of the Indians of Montana can be approached and reconciled from a state level in co-operation with the United States of America, and

Whereas, agencies of the federal government retain jurisdiction on Indian reservations in the state of Montana *of* the administration of economic, social, health, education and welfare programs for Indians, and

Whereas, Indians who reside off reservations generally qualify for

participation in federal programs, *but* are often prohibited from voting on tribal affairs and for tribal officers, and

Whereas, there are sizeable numbers of off-reservation Indians residing in our state of both enrolled and unofficial tribal descent (landless) whose needs for environmental assistance are borne by state and local agencies, and that these needs are derived from problems shared by all Indians, whether they reside on reservations or not, and in consideration of their desire for official voice and representation in seeking solutions to their problems, and

Whereas, programs of the state of Montana should not duplicate those supported by agencies of the federal government as regards jurisdiction of Indian people, and since state responsibility is effected with off-reservation Indians, and since *those* Indians require assistance to co-ordinate their affairs with various tribal groups and federal agencies where they have no official recognition,

Then therefore, let it be resolved that the co-ordinator of Indian affairs should assess the problems of all Indians to include those who reside off known reservations, and who seek ways and means of communicating their opinions and needs to agencies of responsibility, and that the co-ordinator should actively assist *them* in organizing *their* efforts and that he act as representative and spokesman for organized bodies of Indian people whether reservation or off-reservation classification, whenever *his* assistance is required."

Section 2. Section 82-2702, R.C.M. 1947, is amended to read as follows:

"82-2702. **Office of state co-ordinator of Indian affairs created — appointment of co-ordinator — term — office.** The office of the state co-ordinator of Indian affairs is hereby created. The co-ordinator shall be appointed by the governor from a list of five (5) qualified *Indian applicants* agreed upon by the tribal councils of the respective Indian tribes of the state *and shall serve at the pleasure of the governor.*"

Section 3. Section 82-2703, R.C.M. 1947, is amended to read as follows:

"82-2703. **Duties of co-ordinator.** It shall be the duty of the state co-ordinator of Indian affairs to carry out the legislative policy set forth in section 82-2701.

He shall acquaint himself with the problems confronting the Indians of Montana and he shall advise the legislative and executive branches of the state of Montana of *those* problems and shall make recommendations for the alleviation thereof. He shall also serve the Montana delegation in the federal Congress as an adviser and intermediary in the field of Indian affairs, and shall act as spokesman for representative Indian organizations and groups, public and private, whenever *his* support is solicited."

Approved March 11, 1974

## CHAPTER NO. 161

AN ACT TO REQUIRE NOTICE TO SURFACE OWNER PRIOR TO

**PLUGGING AND ABANDONING OIL OR GAS WELLS AND PROVIDING THE OPTION TO SURFACE OWNER OF HAVING THE WELLS PIPE BURIED.**

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is a new section to be numbered 60-901, R.C.M. 1947, which reads as follows:

**60-901. Notice required to surface owner — option of having pipe buried.** No person shall plug and abandon an oil or gas well located within this state without first giving reasonable notice of his intention to do so to the surface owner of record of the land on which said well is located. Upon receipt of notice to plug and abandon, the surface owner may by written notice given within fifteen (15) days thereafter direct that the well pipe for said well shall be buried to a depth of not less than three (3) feet. The board of oil and gas conservation shall adopt regulations to implement this act.

Approved March 11, 1974

**CHAPTER NO. 162**

**AN ACT TO PROVIDE FOR A PRESIDENTIAL PREFERENCE PRIMARY ELECTION IN MONTANA.**

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is a new section to be numbered 23-3322, R.C.M. 1947, which reads as follows:

**23-3322. Date of presidential primary.** In the years in which a president of the United States is to be elected, a presidential preference primary election will be held on the same day as the primary provided for in section 23-3301, R.C.M. 1947.

Section 2. There is a new section to be numbered 23-3323, R.C.M. 1947, which reads as follows:

**23-3323. Ballot.** The regular ballots provided for in section 23-3308, R.C.M. 1947, shall be used for the presidential preference primary election. The presidential section of the ballot shall be placed before any other section, national, state, or local.

Section 3. There is a new section to be numbered 23-3324, R.C.M. 1947, which reads as follows:

**23-3324. Ballot listings.** The presidential preference ballot shall list all candidates nominated in accordance with the provisions of this act, and shall, in addition, include a presidential ballot position which shall be designated as "no preference."

Section 4. There is a new section to be numbered 23-3325, R.C.M. 1947, which reads as follows:

23-3325. **Nomination petition.** Before a presidential candidate may qualify for placement on the ballot, he must be nominated on petitions with the verified signatures of at least one thousand (1,000) qualified electors from each congressional district. The secretary of state is empowered to prescribe the form and content of the petition.

Section 5. There is a new section to be numbered 23-3326, R.C.M. 1947, which reads as follows:

23-3326. **Submission and verification of petition.** Petitions of nomination for the presidential preference primary election must be presented to the county clerk and recorder of the county in which the signatures are gathered. The county clerk and recorder must verify the signatures in the manner prescribed in section 37-103, R.C.M. 1947, and must forward the petitions to the secretary of state. The petitions must be submitted to the clerk and recorder at least thirty (30) days before the filing deadline established in section 23-3305, R.C.M. 1947.

Section 6. There is a new section to be numbered 23-3327, R.C.M. 1947, which reads as follows:

23-3327. **Notification of candidates.** If the signatures and petitions fulfill the requirements of this act, the secretary of state shall immediately notify the candidates named on the petitions that they shall be placed upon the presidential preference primary election ballot, unless they file with the secretary of state a notarized affidavit that they are not a candidate for president. The notification of the candidate shall be made at least fifteen (15) days before the filing deadline established in section 23-3305, R.C.M. 1947. The affidavit of non-candidacy must reach the secretary of state by the filing deadline established in section 23-3305, R.C.M. 1947.

Section 7. There is a new section to be numbered 23-3328, R.C.M. 1947, which reads as follows:

23-3328. **Delegates to national presidential nominating conventions.** The method of selection of delegates to national presidential nominating conventions is to be set by party rules. The use of the results of the presidential preference primary election by the political parties in their delegation selection systems is discretionary and is to be determined by party rules.

Approved March 11, 1974

## CHAPTER NO. 163

AN ACT AMENDING SECTION 11-1925, R.C.M. 1947, TO PROVIDE FOR PARTIAL PENSIONS FOR VOLUNTEER FIREMEN WHO COMPLETE TEN (10) YEARS' SERVICE BUT ARE PREVENTED FROM COMPLETING TWENTY (20) YEARS' SERVICE; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 11-1925, R.C.M. 1947, is amended to read as follows:

"11-1925. **Pensions to retired firemen.** Each and every fire department relief association organized and existing under the laws of this state shall pay to each of its members who elect to retire from active service after having completed twenty (20) years or more of active duty and has reached the age of fifty (50) years as a fully paid member of a paid, or partly paid and partly volunteer fire department of the city or town wherein such association has been formed, out of any money in the association's "disability and pension fund," a "service pension" in an amount which shall be equal to one-half ( $\frac{1}{2}$ ) of the sum last received by the member as a monthly compensation for his services as an active member of said fire department. However, effective July 1, 1963, and after completing twenty (20) years or more of active service and attaining the age of fifty (50) years, a member elects to serve an additional one (1) to ten (10) years, then the pension shall be increased at the rate of one per cent (1%) per year of such additional service, up to a maximum of sixty per cent (60%) of the last month's salary received as a monthly compensation for his services as an active member of said fire department. However, the monthly compensation paid to members retiring on or after July 1, 1973, shall in no event become less than one-half ( $\frac{1}{2}$ ) the regular monthly salary paid to a confirmed active fireman of that city as provided each and every year in the annual budget of that city. In case of volunteer men the compensation shall in no event exceed the sum of seventy-five dollars (\$75) per month.

A member of a pure volunteer fire department who has served twenty (20) years or more as an active member of such fire department, without qualifying as to any provisions pertaining to an attained age, shall be entitled to the benefits provided for by this act; *provided, that a member of a pure volunteer fire department who has completed at least ten (10) years' service as an active member of such fire department, but who is prevented from completing at least twenty (20) years' service by dissolution or discontinuance of his volunteer fire department, or by personal relocation due to transfer or loss of employment, or by personal disability, or by any other factor beyond his reasonable control, may nevertheless qualify for partial or reduced pension, in such amount and to such extent as shall be determined by the board of trustees of the fire department relief association, without qualifying as to any provisions pertaining to an attained age.*"

Section 2. This act is effective on its passage and approval.

Approved March 11, 1974

## CHAPTER NO. 164

AN ACT PROVIDING FOR THE DISPOSITION OF WAGES COLLECTED BY THE COMMISSIONER OF LABOR AND INDUSTRY.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is a new section to be numbered 41-1314.3, R.C.M. 1947, which reads as follows:

41-1314.3. **Disposition of wages.** (1) The commissioner of labor and industry shall deposit wages collected by him under Title 41, chapters 13 and 23, R.C.M. 1947, into the agency fund and shall attempt to make payment of wages to the entitled person. Wages deposited into the agency fund are not interest bearing.

(2) Wages collected by the commissioner of labor and industry remaining unclaimed for a period of more than two (2) years from the date of collection shall be forfeited to the state general fund.

Approved March 11, 1974

## CHAPTER NO. 165

AN ACT TO AMEND SECTION 66-1020, R.C.M. 1947, TO INCREASE THE COMPENSATION AND ALLOW FOR ACTUAL AND NECESSARY EXPENSES FOR MEMBERS OF THE BOARD OF MEDICAL EXAMINERS.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 66-1020, R.C.M. 1947, is amended to read as follows:

"66-1020. **Compensation of members.** Each member of the state board of medical examiners shall receive *twenty-five dollars (\$25) per day compensation while traveling to and from board meetings, and while attending board meetings, and for each full day away from home while conducting board business plus actual and necessary expenses* and mileage equal to that allowed by law to the members and employees of any other state agency, board or commission, while in the active and necessary discharge of his duties."

Approved March 11, 1974

## CHAPTER NO. 166

AN ACT TO AMEND SECTION 66-1026 AND SECTION 66-1025, R.C.M. 1947, TO RECOGNIZE THE PHYSICIAN TEST OF THE MEDICAL COUNCIL OF CANADA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 66-1026, R.C.M. 1947, is amended to read as follows:



"66-1026. **Qualifications for licensure — temporary certificate.** (1) Subject to the other provisions and conditions of this act, a temporary certificate to practice medicine may be granted by the board to an applicant therefor, who may be either a citizen of the United States or an alien, upon the basis of;

(a) the passing by the applicant of an examination given and graded by the board; or

(b) a certification of record or other certificate of examination issued to or for the applicant by the National Board of Medical Examiners or successors, by the Federation Licensing Examination Committee, or successors, *or by the Medical Council of Canada, or successors, if the applicant is a graduate of a Canadian medical school which has been approved by the Medical Council of Canada, or successors*, certifying that the applicant has passed an examination given by the board; or

(c) a valid, unsuspended and unrevoked license of any certificate issued to the applicant, on the basis of an examination, by a duly constituted examining board under the laws of any other state or of any territory of the United States or of the District of Columbia or of any foreign country whose licensing standards at the time such license or certificate was issued were essentially equivalent, in the judgment of the board, to those of the state of Montana at the time for the granting of a license to practice medicine; and

(d) being a graduate of an approved medical school who has completed one (1) year of internship, or its equivalent, and is of good moral character and good conduct; and

(e) the board may require that graduates of foreign medical schools shall have passed the examination given by the Education Council for Foreign Medical Graduates, or successors."

Section 2. Section 66-1025, R.C.M. 1947, is amended to read as follows:

"66-1025. **Qualifications for licensure — physician's certificates, reciprocity and endorsement.** (1) Subject to the other provisions and conditions of this act, a physician's certificate, or a certificate by reciprocity or a certificate by endorsement shall be granted by the board to an applicant therefor only upon the basis of:

(a) the passing by the applicant of an examination given and graded by the board; or

(b) a certification of record or other certificate of examination issued to or for the applicant by the National Board of Medical Examiners, or successors, by the Federation Licensing Examination Committee, or successors, *or by the medical council of Canada, or successors, if the applicant is a graduate of a Canadian Medical School which has been approved by the medical council of Canada, or successors*, certifying that the applicant has passed an examination given by such board; or

(c) a valid, unsuspended and unrevoked license or certificate issued to the applicant on the basis of an examination, by a duly constituted exam-

ining board under the laws of any other state or any territory of the United States or of the District of Columbia or of any foreign country whose licensing standards at the time such license or certificate was issued were, in the considered judgment of the board, essentially equivalent to those of the state of Montana for the granting of a license to practice medicine, provided:

(i) that under the scope of such license or certificate the applicant was authorized to practice medicine in such state, territory or country;

(ii) that no applicant who applies for a license on the basis of an examination and fails the examination shall thereafter be granted a license based on credentials from another state, territory or foreign country or on a certificate issued by the National Board of Medical Examiners, or successors by the Federation Licensing Examination Committee, or successors, *or by the medical council of Canada, or successors*;

(iii) that the board may, by specific regulation, prescribe and enforce reciprocity or endorsement requirements current with changes in standards in the practice of medicine;

(iv) that the board may, in the case of an applicant for admission by reciprocity, or endorsement, require a written or oral examination of said applicant; and

(v) the board may require that graduates of foreign medical schools shall have passed the examination given by the Education Council for Foreign Medical Graduates, or successors.

(vi) holders of the degree of doctor of osteopathy granted in 1955 or before will be certified only on the basis of taking and passing the examination given by the board. Holders of the degree of doctor of osteopathy granted after 1955 will be certified in the same manner as provided above for physicians."

Approved March 11, 1974

## CHAPTER NO. 167

AN ACT TO AMEND SECTIONS 66-1031 AND 66-1033, R.C.M. 1947, BY AUTHORIZING THE BOARD OF MEDICAL EXAMINERS TO SET EXAMINATION FEES.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 66-1031, R.C.M. 1947, is amended to read as follows:

"66-1031. **License fees.** (1) An applicant for a license to practice medicine to be issued on the basis of an examination by the board shall pay an examination fee as set by the board. *The board shall set the fee and it shall be reasonable and commensurate with the costs of the examination*

*and related costs. Such examination fee shall be in addition to the application fee;*

*(2) All applicants, except applicants for temporary licenses, shall pay an initial application fee of one hundred dollars (\$100);*

*(3) An applicant for a temporary license shall pay an initial fee of twenty-five dollars (\$25) and twenty-five dollars (\$25) for each renewal thereof.*

*(4) No license tax shall be imposed upon physicians by a municipality or any other subdivision of the state."*

Section 2. Section 66-1033, R.C.M. 1947, is amended to read as follows:

"66-1033. **Examination.** Examinations for a license to practice medicine shall be held not less than twice each year, at such time and place as shall be specified by the board. The examination shall be conducted in the English language, and shall be sufficiently comprehensive in medicine to adequately test the applicant's professional competence and ability. The examination shall be fair and impartial. Examination papers shall not disclose the name of any applicant but shall be identified by a number to be assigned by the executive secretary of the board. The board may use the examination or portion thereof prepared by the National Board of Medical Examiners, or the examination prepared by the Federation Licensing Examination Committee, or successors.

The board may, in its discretion, give an oral or a practical examination to test the applicant's qualifications for licensure, and grant appropriate credit therefor.

The board may use other Montana physicians to assist in preparing and conducting such examination.

No person shall be granted a license to practice medicine if he fails to attain an average grade of at least seventy-five per cent (75%). If an applicant fails to meet such minimum grade requirements in his first examination, he may, after not less than six (6) months nor more than twelve (12) months, be re-examined. He may take one (1) additional examination, but not less than one (1) year after the date of the last preceding examination. *An examination fee shall be charged for each additional examination.* In case an applicant is prevented through no fault of his own from taking a scheduled examination he may, within two (2) years, be examined without *submitting* a new application."

Approved March 11, 1974

## CHAPTER NO. 168

AN ACT AMENDING SECTION 11-2025, R.C.M. 1947, TO CLARIFY THE CIRCUMSTANCES IN WHICH PAYMENTS UNDER THE VOLUNTEER FIREMEN'S PENSION PLAN SHALL BE MADE TO

WIDOWS AND CHILDREN OF DECEASED VOLUNTEER FIREMEN;  
AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 11-2025, R.C.M. 1947, is amended to read as follows:

**"11-2025. Payment of a claim — beneficiaries of decedent.**

1. Upon receipt of a claim under subparagraphs one (1), two (2), three (3) and four (4), or any thereof, of section 11-2022, by the industrial accident board, if the same is found to be in compliance with the provisions of subsection one (1) of section 11-2024, the board must order the allowance thereof, and pay the same by warrants drawn upon the volunteer firemen's fund to the order of the attending physician or surgeon, attending nurse, and hospital.

2. All payments under the volunteer firemen's pension plan shall be approved by the public employees' retirement system and paid by warrants drawn upon the earmarked revenue fund, payable to the order of the individual qualified volunteer fireman; provided, however, that in the event of the death of any volunteer fireman *who has not reached the age of fifty-five (55) years but who has otherwise qualified for full participation hereunder, or in the event of the death after February 27, 1971, of any volunteer fireman who has not reached the age of fifty-five (55) years but who has otherwise qualified for partial participation hereunder, or in the event of the death of any such volunteer fireman after he has qualified for full participation hereunder but before he has received payments hereunder totaling at least two thousand dollars (\$2,000), or in the event of the death of any such volunteer fireman after February 27, 1971 and after he has qualified for partial participation hereunder but before he has received payments hereunder totaling a proportion of two thousand dollars (\$2,000) determined under the formula set forth in section 11-2023 (2)(A)(II);* and if such deceased volunteer fireman shall have left a widow, then such *full or partial participation* pension shall be paid or continue to be paid to said widow by a warrant or warrants drawn upon the earmarked revenue fund and payable to the order of said widow, until her death or remarriage; or if said deceased volunteer fireman shall have left no widow but shall have left a child or children under the age of eighteen (18) years, then such *full or partial participation* pension shall be paid or continue to be paid to the guardian or other person having custody of the said child or children, until the youngest child shall reach the age of eighteen (18) years. Provided, further, that in the event of such payments after the death of a volunteer fireman, to or for his widow or children, then such pension shall terminate, and no further payments shall be made hereunder, *in the case of a full participation pension when a total of two thousand dollars (\$2,000) shall have been paid upon such pension, including any payments made to the volunteer fireman before his death, or in the case of a partial participation pension, when a total of a proportion of two thousand dollars (\$2,000) determined under the formula set forth in section 11-2023 (2)(A)(II) shall have been paid upon such pension, including any payments made to the volunteer fireman before his death.*

If such deceased volunteer fireman shall leave neither widow nor child under the age of eighteen (18) years, then his pension shall terminate at the end of the month prior to the month in which his death occurs."

Section 2. This act is effective on its passage and approval.

Approved March 11, 1974

## CHAPTER NO. 169

AN ACT TO AMEND SECTION 23-3103, R.C.M. 1947, OF THE ELECTION LAWS, BY PROVIDING THAT POLLING PLACES NEED NOT BE WITHIN THE BOUNDARIES OF THE PRECINCT, AND PROVIDING FOR PUBLICATION OF THE LOCATION OF POLLING PLACES, AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 23-3103, R.C.M. 1947, is amended to read as follows:

"23-3103. **Designation of polling place.** The commissioners shall make an order designating the *polling place for each precinct, at the session at which election judges are appointed. Such order may provide for polling places to be located outside the boundaries of the precinct.*

*Not more than ten (10) nor less than three (3) days before an election, the registrar or city clerk shall publish in a newspaper of general circulation in the county, a statement of the locations of the precinct polling places."*

Section 2. This bill becomes effective upon passage and approval.

Approved March 11, 1974

## CHAPTER NO. 170

AN ACT AMENDING SECTION 11-1912, R.C.M. 1947, TO PROVIDE FOR FUNDING OF DISABILITY AND PENSION FUNDS OF FIRE DEPARTMENT RELIEF ASSOCIATIONS IN THIRD CLASS CITIES; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 11-1912, R.C.M. 1947, is amended to read as follows:

"11-1912. **Tax levy for fund.** For the purpose of maintaining said

disability and pension funds of such fire department relief association, in an amount equal to two per centum (2%) of the taxable valuation of all taxable property within the limits of any city, town or municipality, the city or town council or the commission or such other proper authority of any municipality, as is now or may hereafter be established, under special or local laws passed by the legislative assembly and adopted by the electors within such city, town or municipality, entitled to vote thereon, at all times when the said relief association fund is in a total amount of less than two per centum (2%) of the taxable valuation of all taxable property within the limits of the city, town or municipality, shall, annually, in the manner provided by law, at the time of the levy of the annual tax, levy a special tax as hereinbelow set forth, which said special tax shall be collected as other taxes are collected and when so collected shall be paid into the disability and pension fund of the fire department relief association of said city, town or municipality:

1. Whenever the total amount of a fire department relief association's fund is less than two per centum (2%) of the taxable valuation of all taxable property within the limits of the city, town or municipality, the special tax levy shall be not less than one (1) mill nor more than four (4) mills on each dollar of taxable valuation of all property assessed for taxes within the limits of said city, town or municipality; and said special tax levy shall be an amount sufficient as will provide a growth per year in such fire department relief association's fund, considering all sources of income to such fund and the payment of obligations out of such fund, in an amount equal to the sum produced by one (1) mill levied on the taxable valuation of all the taxable property in said city, town or municipality.

2. Whenever the total amount of the fire department relief association's fund is less than two per centum (2%) of the taxable valuation of all taxable property within said city, town or municipality, but more than one per centum (1%) of said taxable valuation, and when the special tax levy of one (1) mill on each dollar of taxable valuation within said city, town or municipality will cause such fund, considering all sources of income, and all payments to be made out of such fund, to exceed two per centum (2%) of the taxable valuation of all taxable property within said city, town or municipality, the tax levy shall be such fractional part of one (1) mill as will produce sufficient revenue to cause the fire department relief association's disability and pension fund to be more than two per centum (2%) of the taxable valuation of all taxable property in said city, town or municipality.

3. In cities of the third class, when the fire department relief association's disability and pension fund contains an amount of less than two per centum (2%) of the taxable valuation of all taxable property within the city limits of the city, town or municipality, the city council *shall* levy an annual special tax of *not less than one (1) mill and not to exceed four (4) mills* on the dollar of all taxable valuation of all taxable property assessed within the said city, town or municipality."

Section 2. This act is effective on its passage and approval.

Approved March 11, 1974

## CHAPTER NO. 171

AN ACT AMENDING SECTION 75-8601, R.C.M. 1947, WAIVER OF

**TUITION FOR RESIDENT SENIOR CITIZENS WITHIN THE MONTANA UNIVERSITY SYSTEM.**

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 75-8601, R.C.M. 1947, is amended to read as follows:

"75-8601. **Charges for tuition — waiver of nonresident fees.** The regents may:

(a) prescribe tuition rates, matriculation charges, and incidental fees for students in institutions under their jurisdiction.

(b) waive at their discretion, nonresident tuition for selected and approved nonresident students not to exceed at any unit two percent (2%) of the full-time equivalent enrollment at that unit during the preceding year; except that when necessary such tuition may be waived in excess of two percent (2%) of unit enrollment for nonresident students who enroll under provisions of any WICHE sponsored state reciprocal agreements which provide for the payment, where required, of the student support fee by the reciprocal state.

(c) *waive resident tuition for students at least sixty-two (62) years of age.*"

Approved March 11, 1974

**CHAPTER NO. 172**

**AN ACT TO AMEND SECTION 9-401, R.C.M. 1947, TO PERMIT COUNTIES TO ACQUIRE AND CONDUCT CEMETERIES ALREADY ESTABLISHED AND CONDUCTED BY MUNICIPAL CORPORATIONS.**

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 9-401, R.C.M. 1947, is amended to read as follows:

"9-401. **Power of county commissioners to conduct cemeteries — joint conduct of cemeteries.** The board of county commissioners of any county within the state of Montana is hereby given jurisdiction and power to establish and conduct cemeteries, and to acquire lands for said purpose by purchase, condemnation, gift, or devise, and also to acquire by purchase, condemnation, gift, or devise, cemeteries already established and conducted by persons, firms, or corporations *including* municipal corporations and are also given jurisdiction and power to establish and conduct cemeteries jointly with any incorporated city or town in such county, and jointly with any incorporated city or town, to acquire and conduct cemeteries already established or conducted by any person, firm,

or corporation *including* municipal corporations; provided, that nothing herein contained will permit the interment of bodies of deceased persons in any such cemetery so condemned and taken over as are, under the articles of incorporation or bylaws of such cemetery association or corporation, debarred from burial therein."

Approved March 11, 1974

## CHAPTER NO. 173

AN ACT AMENDING SECTION 92-615, R.C.M. 1947, RELATING TO NOTICE OF DENIAL OF CLAIM BY INSURER, AND AMENDING SECTION 92-616, R.C.M. 1947, RELATING TO COSTS AND ATTORNEY FEES ON CLAIMS FOUND COMPENSABLE, BY DELETING AND ADDING CERTAIN REQUIREMENTS IN THE TWO SECTIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 92-615, R.C.M. 1947, is amended to read as follows:

"92-615. **Notice of denial of claim by insurer.** Every insurer under any plan for the payment of workmen's compensation benefits shall within thirty (30) days of receipt of a claim *for compensation* either accept or deny the claim, and if denied shall inform the claimant *and the division* in writing of such denial. If the insurer determines to deny a claim *on which payments have been made during a time of further investigation*, or after a claim has been accepted, terminates biweekly compensation benefits, it may do so only after fifteen (15) days written notice to the claimant and the division. *However, an insurer may, after written notice to the claimant and the division, make payment of compensation benefits within thirty (30) days of receipt of a claim for compensation without such payments being construed as an admission of liability or a waiver of any right of defense.*"

Section 2. Section 92-616, R.C.M. 1947, is amended to read as follows:

"92-616. **Costs and attorneys' fees payable on denial of claim later found compensable.** In the event the insurer denies the claim *for compensation* or terminates *compensation benefits*, and the claim is later *adjudged* compensable, *by the division or on appeal*, the insurer shall pay *reasonable costs and attorneys' fees* as established by the division. *However, under rules adopted by the division and in the discretion of the division, an insurer may suspend compensation payments for not more than thirty (30) days pending the receipt of medical information.*"

Section 3. This act is effective on its passage and approval.

Approved March 11, 1974

## CHAPTER NO. 174

AN ACT AMENDING SECTION 54-133, R.C.M. 1947, TO CLARIFY THE



PENALTIES FOR POSSESSION OF DANGEROUS DRUGS, AND  
PROVIDE AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 54-133, R.C.M. 1947, is amended to read as follows:

"54-133. **Criminal possession of dangerous drugs.** (a) A person commits the offense of criminal possession of dangerous drugs if he possesses any dangerous drug as defined in this act.

(b) Any person convicted of a criminal possession of marihuana or its derivatives in an amount, the aggregate weight of which does not exceed sixty (60) grams of marihuana, or one (1) gram of hashish, shall, for the first offense, be guilty of a misdemeanor and is punishable by a fine not to exceed one thousand dollars (\$1,000) or by imprisonment in the county jail not to exceed one (1) year, or by both such fine and imprisonment. A person convicted of a second, or subsequent, offense under this subsection is punishable by a fine not to exceed one thousand dollars (\$1,000) or by imprisonment in the county jail not to exceed one (1) year or in the state prison not to exceed three (3) years or by both such fine and imprisonment.

(c) *A person convicted of criminal possession of dangerous drugs not otherwise provided for in subsection (b) shall be imprisoned by imprisonment in the state prison not to exceed five (5) years.*

(d) A person of the age of twenty-one (21) years or under, convicted of a first violation under this section shall be presumed to be entitled to a deferred imposition of sentence. Jurisdiction under this section shall be exclusively in the district court."

Section 2. This act shall be effective on its passage and approval.

Approved March 11, 1974

## CHAPTER NO. 175

AN ACT AMENDING SECTION 66-802, R.C.M. 1947, AND  
CLARIFYING DEFINITION OF COSMETOLOGY.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 66-802, R.C.M. 1947, is amended to read as follows:

"66-802. **Definitions.** The practice and teaching of cosmetology is defined to be and includes any or all work generally and usually included in the term "hairdressing" and "beauty culture" and performed in so-called hairdressing and beauty shops, or by itinerant cosmetologists, which work is done for the embellishment, cleanliness and beautification of the hair, scalp, face, arms or hands. *The practice and teaching of cos-*

*metology* shall not be construed to include (1) itinerant cosmetologists who perform their services without compensation for demonstration purposes, in any regularly established store or place of business, holding a license from the state of Montana as such store or place of business *nor* (2) cosmetological artists who demonstrate cosmetological skills under the auspices of the state association of cosmetology or its affiliated units, whether at meetings or in licensed cosmetological establishments.

A cosmetological establishment is any premises, building or part of building whereon or wherein is practiced any branch or combination of branches of cosmetology, or the occupation of a hairdresser and cosmetician or cosmetologist.

A cosmetological establishment shall at all times be in charge of a manager-operator."

Approved March 11, 1974

## CHAPTER NO. 176

AN ACT AUTHORIZING BOARDS OF COUNTY COMMISSIONERS TO EXPEND FUNDS FOR THE BICENTENNIAL PURPOSES; PROVIDING FOR AN EFFECTIVE DATE; AND PROVIDING FOR AN AUTOMATIC REPEAL.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Funds for bicentennial purposes.** The boards of county commissioners in each county may appropriate and expend funds for bicentennial purposes.

Section 2. This act shall be effective upon passage and approval.

Section 3. This act is automatically repealed January 1, 1977.

Approved March 11, 1974

## CHAPTER NO. 177

AN ACT AMENDING SECTION 11-710, R.C.M. 1947, RELATING TO THE QUALIFICATION OF MAYOR, BY LOWERING THE AGE OF ELIGIBILITY FROM TWENTY-FIVE (25) YEARS TO TWENTY-ONE (21) YEARS.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 11-710, R.C.M. 1947, is amended to read as follows:

"11-710. **Qualification of mayor.** No person shall be eligible to the office of mayor unless he shall be at least *twenty-one (21)* years old and a taxpaying freeholder within the limits of the city or town, and a resident of the state for at least three years, and a resident of the city or town or an area which has been annexed by the city or town for which he may be elected mayor two years next preceding his election to said office, and shall reside in the city or town for which he shall be elected mayor during his term of office."

Approved March 11, 1974

## CHAPTER NO. 178

### AN ACT TO ESTABLISH A SHERIFFS' RETIREMENT SYSTEM.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is a new section to be numbered 68-2601, R.C.M. 1947, which reads as follows:

68-2601. **A sheriffs' retirement system is established.** A retirement system is established for Montana sheriffs which shall be known as the "sheriffs' retirement system." It will be an actuarial reserve system for the payment of death, disability and retirement benefits to sheriffs and to the beneficiaries of the sheriffs to provide for themselves and their dependents in the case of disability or death, and upon retirement from active duty.

Section 2. There is a new section to be numbered 68-2602, R.C.M. 1947, which reads as follows:

68-2602. **Definitions.** The words and phrases used in this act shall have the following meanings: (1) "Accumulated deductions" — the total amount deducted from the salary of a member either during a period of membership service or as transferred from the public employees' retirement system with respect to a period of prior service and standing to his credit in the account together with the accrued interest.

(2) "Accumulated contributions" — the total amount deducted from the salary of a member either during a period of membership service or as transferred from the public employees' retirement system with respect to a period of prior service and standing to his credit in the account together with the accrued interest.

(3) "Beneficiary" — a person having an insurable interest in the member's life who is nominated in an acknowledged document by the member, which is filed with the board.

(4) "Retired sheriff" — a person receiving a retirement allowance under this act.

(5) "Board" — the sheriffs' retirement board.

(6) "Member" — any person who has accumulated deductions in the account to his credit.

(7) "Final salary" — the average annual salary received by a member before any deductions are made, and exclusive of maintenance, allowances and expenses, for any three (3) years of continuous service from which contributions were deducted. In the event that a member has not served three (3) years, the total salary earned, divided by the number of years served.

(8) "Actuarial equivalent" — a benefit computed using the mortality tables and interest rates adopted by the board, compounded annually.

(9) "Account" — the Montana sheriffs' retirement account administered by the sheriffs' retirement board.

(10) "Vested retirement" — a retirement not for cause and before retirement age.

(11) "Member's annuity" — payments for life derived from contributions made by the contributor while employed.

(12) "Retirement allowance" — the state annuity plus the member's annuity.

(13) "State annuity" — payments for life derived from contributions made by county contributions into the sheriffs' retirement account, together with any supplemental legislative appropriations to said account.

(14) "Creditable service" — the aggregate of all of a member's current and prior service.

(15) "Service credits" — the credit a member employed on a part-time basis shall receive which is a year of service for each fiscal year during which the member was employed the whole year and was engaged in his duties the full amount of time he was required by employment.

(16) "Membership service" — service for which an amount is deducted from the salary of a member and paid into the account.

(17) "Prior service" — that service for which credit was granted by the public employees' retirement system of the state of Montana.

(18) "Service" — employment as a sheriff.

(19) "Sheriff" — any elected or appointed county sheriff, undersheriff or regularly appointed and acting deputy sheriff.

Section 3. There is a new section to be numbered 68-2603, R.C.M. 1947, which reads as follows:

68-2603. **A sheriff's retirement board is created.** The board shall consist of five (5) persons who shall be the same persons that comprise the board of administration of the public employees' retirement system.

Section 4. There is a new section to be numbered 68-2604, R.C.M. 1947, which reads as follows:

68-2604. **Functions of the board.** The board may establish such rules

and regulations as it deems necessary and is charged with the proper administration, operation and enforcement of this act. The board shall be the authority to prescribe the conditions under which persons may be admitted to and continue to receive benefits under the retirement system. It shall keep the data necessary for actuarial valuation purposes. It shall have biennial actuarial investigations made into the mortality and service experience of the members and to the beneficiaries of the account, and shall adopt one or more mortality tables.

Section 5. There is a new section to be numbered 68-2605, R.C.M. 1947, which reads as follows:

**68-2605. Sheriff's retirement account created — investment of funds — transfer of funds.** (1) A sheriffs' retirement account is created within the public employees' retirement system. All moneys received under this act shall be credited to this account. The state treasurer shall be the custodian of the account and will respond to the exclusive administrative control of the board. Whenever there is over twenty-five thousand dollars (\$25,000), on deposit in the account that amount will be invested by the board of investments as part of the long-term investment fund and any of the account in an amount of twenty-five thousand dollars (\$25,000) or less shall be invested by the board of investments as part of the short term investment fund when so directed by the sheriffs' retirement board.

(2) The board of administration shall, upon passage of this act, ascertain the amount appropriated to the account hereby created and the state treasurer shall transfer that amount to the account. The state examiner shall audit this transfer of funds.

Section 6. There is a new section to be numbered 68-2606, R.C.M. 1947, which reads as follows:

**68-2606. Monies paid to board and credited to retirement system account — accumulated deductions by sheriffs for prior service — contributions — investment earnings — any supplemental appropriations or revenues.** The following money shall be paid to the board, who shall credit such payments to the sheriffs' retirement system account:

(1) all accumulated deductions paid into the public employees' retirement system by any sheriff, during any period of prior service, as defined in this act; plus

(2) all contributions paid into the public employees' retirement system coincident with such accumulated deductions by the state of Montana or any county or city;

(3) all contributions by the various counties as required by this act;

(4) all contributions by sheriffs as defined in this act;

(5) all interest on and increase of the investments and moneys under this act;

(6) any supplemental appropriation or revenue from a source or sources approved by the legislature or money received directly from the federal government for funding of law enforcement retirement systems.

Section 7. There is a new section to be numbered 68-2607, R.C.M. 1947, which reads as follows:

**68-2607. Rules of membership — commencement of members' contributions.** Every sheriff shall be required to become a member of the retirement system established by this act on July 1, 1974, unless he was previously a member of the public employees retirement system, in which case, he may at his option become a member of the retirement system established by this act. Contributions by members under this act shall commence with the first payroll after July 1, 1974. All sheriffs who become members of the retirement system shall remain so long as actively employed in such capacity.

Section 8. There is a new section to be numbered 68-2608, R.C.M. 1947, which reads as follows:

**68-2608. Members' contributions — deduction from pay.** Every member shall be required to contribute into the account seven percent (7%) of his monthly salary which shall be deducted from his salary and deposited to his credit in the account. The contributor's retirement allowance shall be increased for any member who contributes after twenty-five (25) years of service, by an annuity calculated as twice the actuarial equivalent of the portion of the member's accumulated deductions arising from contributions after the completion of twenty-five (25) years of service.

Section 9. There is a new section to be numbered 68-2609, R.C.M. 1947, which reads as follows:

**68-2609. Counties contributions — administrative expense paid by the state of Montana.** The various counties of Montana shall pay monthly seven and fifty-five one hundredths percent (7.55%) of each sheriff's gross salary into the retirement account created by this act. The expense of the administration of this act, exclusive of the payment of retirement allowances and other benefits shall be paid by the state of Montana.

Section 10. There is a new section to be numbered 68-2610, R.C.M. 1947, which reads as follows:

**68-2610. Eligibility for service retirement.** Any sheriff in service who has completed at least twenty-five (25) years of service, and who has reached the age of fifty-five (55) years, may retire on service retirement allowance upon written application to the board, not less than thirty (30) days nor more than ninety (90) days from desired date of retirement. The application shall state the date he desires to be retired. Retirement shall be compulsory for any nonelected sheriff with exception of undersheriff at age sixty-five (65).

Section 11. There is a new section to be numbered 68-2611, R.C.M. 1947, which reads as follows:

**68-2611. Early retirement option.** If a contributor has served twenty (20) years of creditable service as a sheriff and has reached the age of fifty-five (55) years, he is granted the option and privilege of retiring and, in such case, his retirement allowance shall be the actuarial equivalent

of his retirement allowance as otherwise accrued, based upon payment commencing when he would have completed twenty-five (25) years of creditable service, had he not retired.

Section 12. There is a new section to be numbered 68-2612, R.C.M. 1947, which reads as follows:

**68-2612. Service retirement allowance.** The amount of any member's service retirement allowance shall be two percent (2%) of his final salary for each year of creditable service up to a maximum of fifty percent (50%) of final salary.

Section 13. There is a new section to be numbered 68-2613, R.C.M. 1947, which reads as follows:

**68-2613. Disability retirement allowance — disability determined by the board.** In the case of the permanent total disability of the member, regardless of the member's length of service, a disability retirement allowance shall be awarded to the member based on the actuarial equivalent of the member's annuity and the state annuity standing to his credit at the time of his disability retirement; but if such total permanent disability is a direct result of member's service as a sheriff in the line of duty then the member shall be awarded an allowance of one-half ( $\frac{1}{2}$ ) of his final salary. Total disability means a disability of permanent duration or of extended or uncertain duration. The determination shall be made by the board on the basis of competent medical advice.

Section 14. There is a new section to be numbered 68-2614, R.C.M. 1947, which reads as follows:

**68-2614. Retirement allowance for member involuntarily discontinued from service.** Should a member be involuntarily discontinued from service after having completed ten (10) years of total service but before reaching retirement age, he shall, upon filing an application be paid in one of the following ways:

(1) The full amount of accumulated deductions standing to his credit; or

(2) a member's annuity of equivalent actuarial value to his accumulated deductions standing to his credit, plus the actuarial equivalent of a state annuity having a value equal to the present value of a state annuity then standing to his credit.

Section 15. There is a new section to be numbered 68-2615, R.C.M. 1947, which reads as follows:

**68-2615. Voluntary resignation — discharged for incompetence, unlawful conduct — notification of the board — payment of accumulated deductions.** (1) When a member resigns of his own volition or is discharged for cause other than incompetence, malfeasance in office or unlawful conduct before becoming entitled to the retirement allowance, he must:

(a) notify the board of his termination of eligibility and withdraw accumulated contributions standing to his credit at the time of his termination of eligibility, or

(b) notify the board of his termination of current eligibility but request that accumulated contributions standing to his credit be retained by the board for a period of time not to exceed one (1) year pending reestablishment of eligibility.

(2) A member discharged for incompetence, malfeasance in office or unlawful conduct prior to becoming entitled to a retirement allowance shall notify the board of the termination of eligibility. The member shall be paid the accumulated contributions standing to the member's credit at the time of termination of eligibility.

Section 16. There is a new section to be numbered 68-2616, R.C.M. 1947, which reads as follows:

**68-2616. Reinstatement after withdrawal of contributions — redeposit of contributions.** Any member may deposit in the retirement fund, in one (1) sum or in not to exceed twelve (12) monthly or twenty-four (24) semimonthly payments, an amount equal to that which was withdrawn at the last termination of membership plus an amount equal to the interest which would have been credited to the account had the member not withdrawn the contributions upon termination of membership, subject to minimum monthly or semimonthly payments as fixed by the board. If a member, upon reentering the retirement system after a termination of membership, does not elect to make or does not make the redeposit, the member shall reenter as a new member without credit for any service except the prior service credited before the termination. If a member does make such redeposit, his membership shall be continuous and unbroken by the last termination. Regardless of whether such redeposit is made, the documents held by the retirement system as executed by said member prior to termination of membership shall be held by the system for the same purposes as prior to said termination, and beneficiaries nominated shall remain unchanged.

Section 17. There is a new section to be numbered 68-2617, R.C.M. 1947, which reads as follows:

**68-2617. Payments in case of death after retirement.** If a member dies before receiving in payments the amount of the accumulated deductions standing to the sheriff's credit at the time of retirement, the balance shall be paid to the beneficiary.

Section 18. There is a new section to be numbered 68-2618, R.C.M. 1947, which reads as follows:

**68-2618. Payments in case of death before retirement.** If a member dies before retirement, his beneficiary shall be entitled to elect among those of the following options for which the member qualifies:

(1) A lump sum payment of the accumulated deductions standing to the member's credit at his death;

(2) If a member were not eligible to retire at the time of death, a retirement allowance commencing on the member's death which is the actuarial equivalent of a retirement in the amount of two percent (2%) of the final salary for each year of service to a maximum of twenty-five (25) years;



(3) If the member were eligible to retire at the time of death, a retirement allowance commencing on the member's death in the amount of two percent (2%) of the final salary for each year of service to a maximum of twenty-five (25) years;

(4) If the board shall find that the member died as a direct and proximate result of injuries received in the course of employment, a retirement allowance commencing on the member's death in the amount of fifty percent (50%) of the final salary less the amount which is paid to any such beneficiary under the Workmen's Compensation Act of the state of Montana, during the period such compensation is paid or payable; provided that in no event shall a beneficiary be paid for a period longer than the time it would have taken the deceased member to reach the age of sixty-five (65) years or more than fifteen (15) years, whichever is greater.

Section 19. There is a new section to be numbered 68-2619, R.C.M. 1947, which reads as follows:

**68-2619. Retirement allowances payable monthly.** The retirement allowances granted under the provisions of this act shall be paid in monthly annuities and shall not be increased, decreased, revoked, or repealed unless by an act of the legislative assembly of the state of Montana.

Section 20. There is a new section to be numbered 68-2620, R.C.M. 1947, which reads as follows:

**68-2620. Retirement annuities exempt from state or municipal tax, sale, garnishment, attachment, or other process and shall be unassignable.** Any money received or to be paid as a member's annuity, state annuity, or return of deductions or the right of any of these, shall be exempt from any state or municipal tax and from levy, sale, garnishment, attachment, or any other process whatsoever and shall be unassignable.

Section 21. There is a new section to be numbered 68-2621, R.C.M. 1947, which reads as follows:

**68-2621. Designation of beneficiary.** Every contributor shall have the authority to name a beneficiary by a written acknowledged designation properly filed with the board, and to change the beneficiary in like manner. Such designation and all changes must be filed with the board up until, but not after, the time of retirement.

Section 22. There is a new section to be numbered 68-2622, R.C.M. 1947, which reads as follows:

**68-2622. Election to qualify military service for credit.** Any member now on active duty in, or hereafter inducted into the armed forces of the United States, shall have the option:

(1) to continue payments into the account, or

(2) to allow the board to make the payments during such military service, in which event the member shall repay the account the full amount of such payments upon return to the former status as a sheriff,

and such repayments shall be made within two (2) years after return to such status; provided that a member's service in the armed forces of the United States shall be credited to and made a part of member's service allowance.

Section 23. There is a new section to be numbered 68-2623, R.C.M. 1947, which reads as follows:

**68-2623. False statements or falsification of records illegal — penalties.** (1) No person shall knowingly make any false statement or permit to be falsified any record or records of this retirement system in an attempt to defraud the system.

(2) Should any such change in records fraudulently made or any mistake in records inadvertently made result in any member or beneficiary receiving more or less than the person would have been entitled to had the records been correct, then, on the discovery of such error the board shall correct such error and shall adjust the payments which shall be made to the member or annuitant in such manner that the actuarial equivalent of the benefit to which the person was correctly entitled shall be paid.

(3) Any person violating any of the provisions of subsection (1) of this section shall be guilty of a misdemeanor, and upon conviction shall be subject to a fine not exceeding one thousand dollars (\$1,000) or imprisonment in the county jail not exceeding one (1) year, or both.

Section 24. There is a new section to be numbered 68-2624, R.C.M. 1947, which reads as follows:

**68-2624. Board may revoke, refuse, or suspend member's annuity for conviction of felony — injury or death due to wrongful conduct.** If any beneficiary is convicted of a felony, the board shall have the authority to revoke or suspend disbursement of the state annuity, in its discretion, for as long a time as it deems necessary. Where the illness or injury causing a member to retire, or where the death of a member, or a member to be retired, is directly and proximately caused by such member's immoral or intemperate conduct or gross negligence, the board shall have the authority to refuse, revoke or suspend disbursement of the state annuity for as long as, in its discretion, it deems necessary.

Section 25. There is a new section to be numbered 68-2625, R.C.M. 1947, which reads as follows:

**68-2625. Payments are in addition to those provided by Workmen's Compensation Act.** All payments provided for in this act, except as provided in section 18 of this act, are in addition to any other benefits now or hereafter provided for under the Workmen's Compensation Act of the state of Montana.

Section 26. There is a new section to be numbered 68-2626, R.C.M. 1947, which reads as follows:

**68-2626. Retirement allowance — options.** Until the first payment on account of any retirement allowance is made and subject to the conditions that, if the member dies after retirement and within thirty (30) days from the date upon which the member's election or changed election is received at the office of the retirement board, then said election is void

and of no effect, and the death shall be considered as that of a member before retirement. A member or beneficiary may elect, revoke, or change a previous election prior to the approval of the previous election to receive the actuarial equivalent of the retirement allowance as of the date of retirement, in a lesser retirement allowance payable throughout life with one of the following options:

(1) Upon the member's death, a lesser retirement allowance shall be continued throughout the life of and paid to such person, having an insurable interest in the member's life, as the member nominates by written designation duly executed and filed with the board at the time of retirement.

(2) Upon the member's death, one-half ( $\frac{1}{2}$ ) of the lesser retirement allowance shall be continued throughout the life of and paid to such person, having an insurable interest in the member's life as the member nominated by written designation duly executed and filed with the board at the time of retirement.

(3) Such other benefit or benefits shall be paid either to the beneficiary or such other person or persons as the member nominates, as, together with such other retirement allowances are the actuarial equivalent of the member's retirement allowance, and shall be approved by the board.

Section 27. There is a new section to be numbered 68-2627, R.C.M. 1947, which reads as follows:

**68-2627. Rules of transfer of member's accumulated deductions to employer's account.** The board may in its discretion transfer the accumulated deductions of a member to the employer's account in the sheriffs' retirement account if the member's account has been dormant for a period of ten (10) years, provided that no right of the member shall be jeopardized by such transfer and the accumulated deduction shall be transferred to the member's name upon subsequent reentry to membership.

Section 28. There is a new section to be numbered 68-2628, R.C.M. 1947, which reads as follows:

**68-2628. Sheriffs ineligible for membership in public employees' retirement system.** After July 1, 1974, no sheriff shall be eligible to membership to the state public employees' retirement system and the provisions of said law shall not apply to sheriffs. No provision of this act is to be construed as to deny any sheriff any benefits accrued under provisions of the state public employees' retirement system prior to July 1, 1974.

Section 29. There is a new section to be numbered 68-2629, R.C.M. 1947, which reads as follows:

**68-2629. Severability clause.** It is the intent of the legislature that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of the applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved March 12, 1974

## CHAPTER NO. 179

AN ACT AMENDING SECTION 32-21-105.1, R.C.M. 1947, TO ESTABLISH A DECIBEL NOISE LIMIT FOR MOTORCYCLES.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 32-21-105.1, R.C.M. 1947, is amended to read as follows:

**"32-21-105.1. Headgear required for motorcycle riders—noise suppression devices.** (1) The operator and passenger, if any, of any motorcycle operated upon the streets or highways of this state shall wear protective headgear upon the head. Such headgear shall meet standards established by the department of justice.

(2) All motorcycles operated on the streets and highways of this state shall be equipped at all times with noise suppression devices, including an exhaust muffler, in good working order, and in constant operation. *In addition, all motorcycles operating on streets and highways shall meet the following noise decibel limitations, on the standard A scale, such decibel limitations to be measured at fifty (50) feet distant from the closest point to the motorcycle:*

1. *Any motorcycle manufactured prior to 1970* 92 db(A)
2. *Any motorcycle manufactured after 1969 but prior to 1973* 88 db(A)
3. *Any motorcycle manufactured after 1972 but prior to 1975* 86 db(A)
4. *Any motorcycle manufactured after 1974 but prior to 1978* 80 db(A)
5. *Any motorcycle manufactured after 1977 but prior to 1988* 75 db(A)
6. *Any motorcycle manufactured after 1987* 70 db(A)."

Approved March 12, 1974

## CHAPTER NO. 180

AN ACT TO AMEND SECTION 84-3505, R.C.M. 1947, PERTAINING TO THE PUBLIC CONTRACTORS' LICENSE FEE, BY PROVIDING THAT THE ADDITIONAL LICENSE FEE SHALL BE COMPUTED UPON THE BASIS OF THE ENTIRE CONTRACT, AND SHALL BE WITHHELD FROM PAYMENTS DUE TO THE GENERAL CONTRACTOR, WHO SHALL, IN TURN, WITHHOLD FROM PAYMENTS TO HIS SUB-CONTRACTORS THEIR PORTION OF THE ADDITIONAL LICENSE FEE AS COMPUTED THEREUNDER; PROVIDING REPORTING REQUIREMENTS; AND PROVIDING A PENALTY FOR FAILURE TO REPORT.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 84-3505, R.C.M. 1947, is amended to read as follows:

**"84-3505. Classes of licenses — rights granted under licenses — fees.** (1) There shall be three (3) classes of licenses issued under the provisions of this act; and such classes of licenses are hereby designated as Classes A, B, and C. Any applicant for a license under the provisions hereof, shall specify in his application the class of license applied for.

(2) The holder of a Class A license shall be entitled to engage in the public contracting business within the state of Montana without any limitation as to the value of a single public contract project, subject, however, to such prequalification requirements as may be imposed by the public body or bodies referred to in section 84-3501 (b) and at the time of making the application for such license the applicant shall pay to the registrar a fee in the sum of two hundred dollars (\$200).

(3) The holder of a Class B license shall be entitled to engage in the public contracting business within the state of Montana, but shall not be entitled to engage in the construction of any single public contract project of a value in excess of fifty thousand dollars (\$50,000); and shall pay unto the registrar as a license fee the sum of one hundred dollars (\$100) for such Class B license at the time of making application therefor.

(4) The holder of a Class C license shall be entitled to engage in the public contracting business within the state of Montana, but shall not be entitled to engage in the construction of any single public contract project of a value in excess of twenty-five thousand dollars (\$25,000); and shall pay unto the registrar as a license fee the sum of ten dollars (\$10) at the time of making application therefor.

(5) In addition to the fees enumerated above, each public contractor shall pay to the state an additional license fee in a sum equal to one per cent (1%) of the gross receipts from public contracts during the income year for which the license is issued; provided, however, that the additional license fee hereby imposed shall not be paid upon or collectible from the gross receipts from any public contract which has been let to bid, upon which bids have been awarded, or which has been executed by a public body and a public contractor on the effective date of this act, *and provided further, that the additional license fee shall be computed upon the basis of the entire contract for each separate contract let by any of the public bodies as specified in section 84-3501(b). The prime contractor shall withhold the additional one percent (1%) license fee from payments to his sub-contractors and inform the state department of revenue, on prescribed forms, of the amount of the additional one percent (1%) license fee in his account to be allocated and transferred to the sub-contractor. The notification to transfer portions of the additional one percent (1%) license fee must be filed within thirty (30) days after each payment is made to sub-contractors. If any prime contractor fails to file the required allocation and transfer report at the time required by or under the provisions of this act, a penalty computed at the rate of ten percent (10%) of the additional one percent (1%) license fee withheld from sub-contractors shall be due from the prime contractor.*

(6) Nothing herein shall require any contractor to pay any license fee on any public contract project of a value less than one thousand dollars (\$1,000) nor shall any contractor be required to have a license hereunder

in order to submit a bid or proposal for contracts advertised to be let by the Montana highway commission where federal aid is obtained from the bureau of public roads or the department of agriculture of the United States; neither shall a successful bidder be required to be licensed as provided herein before the awarding and execution of any contract to be let by the state highway commission where federal aid from the bureau of public roads or the department of agriculture of the United States is involved."

Approved March 12, 1974

## CHAPTER NO. 181

AN ACT AMENDING SECTION 71-1520, R.C.M. 1947, TO AUTHORIZE THE STATE AND ITS COUNTIES TO ACCEPT THE FEDERAL SOCIAL SECURITY ADMINISTRATION'S DETERMINATION OF ELIGIBILITY FOR MEDICAL CARE; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 71-1520, R.C.M. 1947, is amended to read as follows:

"71-1520. **Investigation and determination of eligibility.** (a) The county department shall promptly investigate and determine the eligibility of each applicant under this act in accordance with the rules and regulations of the state department. Each applicant shall be informed of his right to a fair hearing and of the confidential nature of the information given. The county department shall determine whether or not the applicant is eligible for assistance under this act, and aid shall be furnished promptly to eligible persons. The county public welfare board shall review the determination of the eligibility or noneligibility made by the county department. Each applicant shall receive written notice of the decision concerning his application and right of appeal shall be secured to the applicant under the procedures of section 71-223.

(b) *Provided, however, the county departments of public welfare and the state department of social and rehabilitation services are hereby authorized to accept the federal social security administration's determination of eligibility for Supplemental Security Income, Title XVI of the Social Security Act, as qualifying such eligible individuals to receive medical assistance under this act. Where a federal determination has been made, the county will not investigate further, nor review the determination.*"

Section 2. This act shall be effective upon passage and approval.

Approved March 12, 1974

## CHAPTER NO. 182

AN ACT TO AMEND SECTION 32-21-122, R.C.M. 1947, REQUIRING SAFETY CHAINS ON TRAILERS.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 32-21-122, R.C.M. 1947, is amended to read as follows:

"32-21-122. **Additional equipment required on certain vehicles.** In addition to other equipment required in this act the following vehicles shall be equipped as herein stated under the conditions stated in section 32-21-121.

(a) On every bus or truck, whatever its size, there shall be the following:

On the rear, two (2) reflectors, one (1) at each side, and one (1) stop light.

(b) On every bus or truck eighty (80) inches or more in over-all width, in addition to the requirements in paragraph (a):

On the front, two (2) clearance lamps, one (1) at each side.

On the rear, two (2) clearance lamps, one (1) at each side.

On each side, two (2) side marker lamps, one (1) at or near the front and one (1) at or near the rear.

On each side, two (2) reflectors, one (1) at or near the front and one (1) at or near the rear.

(c) On every truck-tractor:

On the front, two (2) clearance lamps, one (1) at each side.

On the rear, one (1) stop light.

(d) On every trailer or semitrailer having a gross weight in excess of three thousand (3,000) pounds:

On the front, two (2) clearance lamps, one (1) at each side.

On each side, two (2) side marker lamps, one (1) at or near the front and one (1) at or near the rear.

On each side, two (2) reflectors, one (1) at or near the front and one (1) at or near the rear.

On the rear, two (2) clearance lamps, one (1) at each side, also two (2) reflectors, one (1) at each side, and one (1) stop light.

(e) On every pole trailer in excess of three thousand (3,000) pounds gross weight:

On each side, one (1) side marker lamp and one (1) clearance lamp which may be in combination, to show to the front, side, and rear.

On the rear of the pole trailer or load, two (2) reflectors, one (1) at each side.

(f) On every trailer, semitrailer, or pole trailer weighing three thousand (3,000) pounds gross or less:

*On the front, a steel chain or cable which shall be securely fastened to the towing unit with the minimum diameter of any portion of such chains or cables being one-fourth ( $\frac{1}{4}$ ) of one inch.*

On the rear, two (2) reflectors, one (1) on each side. If any trailer or semitrailer is so loaded or is of such dimensions as to obscure the stop light on the towing vehicle, then such vehicle shall also be equipped with one (1) stop light.

(g) On every truck or truck-trailer combination actively engaged in transporting logs:

(1) Binders on Logging Vehicles

(a) At least three (3) binders shall be required as standard equipment on any truck or truck-trailer combination actively engaged in transporting logs upon the public highways of the state of Montana;

(b) Such binders to be of steel chain or steel cable;

(c) The minimum diameter of any portion of such binders shall be three-eighths ( $\frac{3}{8}$ ) of one inch;

(d) Such binders shall be of sufficient length to encompass any load when secured by a fastener.

(2) Use of Fasteners to Secure Binders

(a) Binders used to secure loads of logs together shall be fastened by means of a fastener.

(b) The minimum diameter of the portions of the fastener under direct stress from the binder shall be three-eighths ( $\frac{3}{8}$ ) of one inch.

(c) The handle, or leverage portion of the fastener, when in use in tightening and holding the binder, shall be securely fastened to the binder or to the fastener in such a way that it cannot be accidentally loosened.

(3) Number and Location of Binders

At least two (2) binders shall be in use on all loads. Such binders shall be placed as close as reasonably possible to the front and rear bunks.

(4) Securing Short Loads

In the event short logs are loaded on top of longer logs, sufficient binders shall be used to secure both ends of such short logs to the main body of the load.

(5) Procedure for Loading—Width Limits

(a) The maximum width of any vehicle, unladen or with load, shall not exceed a width of ninety-six (96) inches, unless permits for excess width have been granted by virtue of section 32-1127.

(b) No logs may extend laterally beyond the stakes which form the outer boundary of the load at the top of such stakes. Logs or poles loaded above the tops of the stakes shall be loaded in a pyramidal fashion.



(h) The board is hereby empowered to make additional rules and regulations governing the use of safety equipment on motor vehicles, vehicles and/or combination of vehicles, that is, trailer hitches, safety chains, mounts, tow bars and other similar equipment as it shall deem advisable for the protection of the public; provided further that any violation of any rules and regulations adopted by the board shall be deemed a misdemeanor."

Approved March 12, 1974

## CHAPTER NO. 183

AN ACT TO AMEND SECTION 62-508, R.C.M. 1947, TO CLARIFY THE BOARD OF HORSE RACING'S AUTHORITY TO ASSESS PENALTIES AGAINST PERSONS VIOLATING THE RULES OF HORSE RACING; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 62-508, R.C.M. 1947, is amended to read as follows:

"62-508. **Penalty for violations of law — power of board.** Any person holding a race meet, and any owner, trainer, or jockey participating in a race meet, without first being licensed by the *board*, and any person violating any of the terms or provisions of this act is guilty of a misdemeanor.

The *board* shall have the power to:

(1) exclude from any and all race courses in this state, any person whom the *board* deems detrimental to the best *interests* of racing; and

(2) *suspend or revoke any license issued by the board to any person or assess a fine, not to exceed five hundred dollars (\$500), against any person who violates any of the provisions of this act or any rule, regulation or order of the board.*

(3) *The board shall promulgate regulations implementing this act, including the right to a hearing for individuals against whom action is taken or proposed herein.*

It shall be lawful to conduct race meets on or at a race track or otherwise, at any time during the week."

Section 2. This act is effective on its passage and approval.

Approved March 12, 1974

## CHAPTER NO. 184

AN ACT TO AMEND SECTIONS 53-428, 53-449, AND 53-450, R.C.M.

1947, RELATING TO THE REQUIREMENTS FOR THE DEPOSIT OF SECURITY UNDER THE MOTOR VEHICLE SAFETY — RESPONSIBILITY ACT; AND TO REPEAL SECTIONS 53-421, 53-422, 53-423, 53-424, 53-425, 53-426, 53-427, R.C.M. 1947.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 53-428, R.C.M. 1947, is amended to read as follows:

"53-428. **Matters not to be evidence in civil suits.** Neither the action taken by the supervisor pursuant to this act, *nor* the findings, if any, of the supervisor upon which such action is based, shall be referred to in any way, nor be any evidence of the negligence or due care of either party, at the trial of any action at law to recover damages."

Section 2. Section 53-449, R.C.M. 1947, is amended to read as follows:

"53-449. **Violations of act—penalties.** (1) Any person who shall forge or, without authority, sign any evidence of proof of financial responsibility, or who files or offers for filing any such evidence of proof knowing or having reason to believe that it is forged or signed without authority, shall be fined not more than one thousand dollars (\$1,000.00) or imprisoned for not more than one (1) year, or both.

(2) Any person whose license or registration or nonresident's operating privilege has been suspended or revoked under this act and who, during such suspension or revocation drives any motor vehicle upon any highway or knowingly permits any motor vehicle owned by such person to be operated by another upon any highway, except as permitted under this act, shall be fined not more than five hundred dollars (\$500.00) or imprisoned not exceeding six (6) months, or both.

(3) Any person willfully failing to return license or registration as required in section 53-448 shall be fined not more than five hundred dollars (\$500.00) or imprisoned not to exceed thirty (30) days, or both."

Section 3. Section 53-450, R.C.M. 1947, is amended to read as follows:

"53-450. **Exceptions.** This act shall not apply with respect to any motor vehicle owned by the United States, this state or any political subdivision of this state or any municipality therein; nor, except for *section* 53-443, with respect to any motor vehicle which is subject to the provisions of section 8-113, requiring insurance or other security."

Section 4. Sections 53-421, 53-422, 53-423, 53-424, 53-425, 53-426, 53-427, R.C.M. 1947, are repealed.

Approved March 12, 1974

## CHAPTER NO. 185

AN ACT TO PROVIDE FOR THE GIVING OF NOTICE OF PUBLIC

HEARINGS REGARDING THE REGULATION OF THE BUSINESS OF RAILROADS TO THE MONTANA CONSUMER COUNSEL; AND TO MAKE REFERENCE TO THE AVAILABILITY OF THE MONTANA CONSUMER COUNSEL IN NOTICES OF HEARINGS BY ADDING THE FOLLOWING SECTIONS TO TITLE 72, R.C.M. 1947.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is a new section to be numbered 72-170, R.C.M. 1947, which reads as follows:

72-170. **Notice to be served on consumer counsel.** In addition to all other forms of notice of hearings conducted by the commission provided for in this title, notices of all hearings shall be served upon the Montana consumer counsel.

Section 2. There is a new section to be numbered 72-171, R.C.M. 1947, which reads as follows:

72-171. **Form of notice for public hearing.** All forms of notice of public hearings conducted by the public service commission under this title, including all notices posted in public places or published in the legal advertising sections of newspapers, shall advise members of the consuming public of the existence of the office of the Montana consumer counsel and its availability to function on behalf of members of the consuming public.

Approved March 12, 1974

## CHAPTER NO. 186

AN ACT ESTABLISHING CERTAIN OFFICERS OF THE LEGISLATURE AND PROVIDING THAT THEY BE ELECTED OR APPOINTED BY THEIR RESPECTIVE CHAMBERS.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is a new section to be numbered 43-214.1, R.C.M. 1947, which reads as follows:

43-214.1. **Officers of the senate and house of representatives.** (1) The elected officers of the senate include: a secretary of the senate and a chaplain. A sergeant-at-arms shall be appointed by the committee on committees.

(2) The elected officers of the house of representatives include: a chief clerk and a chaplain. A sergeant-at-arms shall be appointed by the speaker.

(3) All of the foregoing officers shall be elected or appointed by the house in which they are employed.

Approved March 12, 1974

## CHAPTER NO. 187

AN ACT TO AMEND SECTION 53-147, R.C.M. 1947, TO ALLOW A TEN

(10) DAY GRACE PERIOD FROM THE DATE OF PURCHASE TO MAKE APPLICATION FOR REGISTRATION OF A MOTOR VEHICLE; PROVIDING FOR THE DISPLAY OF PROOF OF PURCHASE; AND PROVIDING PENALTIES.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 53-147, R.C.M. 1947, is amended to read as follows:

**"53-147. New registration required for transferred vehicle — grace period — penalty — display of proof of purchase.** Except as otherwise provided herein, the new owner of the transferred motor vehicle shall have the grace period of ten (10) days from the date of purchase to make application and pay the registration fees and taxes as provided by section 53-114, as if the same was being registered for the first time in that registration year, and, provided the motor vehicle was not purchased from a duly licensed motor vehicle dealer as provided in this chapter, it shall not be a violation of this chapter or any other law for the purchaser to operate the vehicle upon the streets and highways of this state without a certificate of registration during the ten (10) day period; provided, however, that at all times during that period a bill of sale or other proof of purchase reciting the date of purchase shall be clearly displayed in the rear window of the motor vehicle at all times. Failure to make application within the time provided herein shall subject the purchaser to a penalty of ten dollars (\$10), plus one dollar (\$1) for each additional day in which the vehicle remains unregistered, not to exceed twenty-five dollars (\$25). The penalty shall be collected by the county treasurer at the time of registration, and shall be in addition to the fees otherwise provided by law."

Approved March 12, 1974

## CHAPTER NO. 188

AN ACT AMENDING SECTION 11-1024, R.C.M. 1947, TO REMOVE THE LIMITATION ON GOVERNING BODY CONTRIBUTIONS TO GROUP HEALTH INSURANCE PROGRAMS FOR EMPLOYEES OF ELEMENTARY AND HIGH SCHOOL DISTRICTS; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 11-1024, R.C.M. 1947, is amended to read as follows:

**"11-1024. Group insurance for all departments, bureaus, boards, commissions and agencies of the state of Montana, county, city, and town officers and employees — authority — approval of employees — limit on contributions.** All departments, bureaus, boards, commissions and agencies of the state of Montana, and all counties, cities and

towns shall upon approval by two-thirds (⅔) vote of the officers and employees of each such department, bureau, board, commission, agency, county, city and town, enter into group hospitalization, medical, health including long-term disability, accident and/or group life insurance contracts or plans for the benefit of their officers, employees and their dependents, and the respective administrative and governing bodies *shall pay for such insurance* ten dollars (\$10) per month for each officer and employee, *and provided for employees of educational institutions whose employment contracts show at a minimum a full-time academic year of employment such payment for insurance may be an amount equal to twelve (12) times the monthly rate, but may not exceed one hundred twenty dollars (\$120) per year. Provided, however, that for employees of elementary and high school districts premium contributions are not subject to the ten dollar (\$10) limitation of this section.*"

Section 2. This act is effective on its passage and approval.

Approved March 12, 1974

## CHAPTER NO. 189

AN ACT AMENDING SECTION 40-4008, R.C.M. 1947, PROVIDING THAT THE TIME ALLOWED FOR FILING OF CLAIMS UNDER DISABILITY INSURANCE POLICIES BE EXTENDED FROM TWENTY (20) DAYS TO SIX (6) MONTHS.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 40-4008, R.C.M. 1947, is amended to read as follows:

"40-4008. **Notice of claim.** There shall be a provision as follows:

"Notice of Claim: Written notice of claim must be given to the insurer within *six (6) months* after the occurrence or commencement of any loss covered by the policy, or as soon thereafter as is reasonably possible. Notice given by or on behalf of the insured or the beneficiary to the insurer at .... (insert the location of such office as the insurer may designate for the purpose), or to any authorized agent of the insurer, with information sufficient to identify the insured, shall be deemed notice to the insurer."

In a policy providing a loss-of-time benefit which may be payable for at least two (2) years, an insurer may at its option insert the following between the first and second sentences of the above provision:

"Subject to the qualifications set forth below, if the insured suffers loss of time on account of disability for which indemnity may be payable for at least two years, he shall, at least once in every six (6) months after having given notice of the claim, give to the insurer notice of continuance of the disability, except in the event of legal incapacity. The period of

six (6) months following any filing of proof by the insured or any payment by the insurer on account of such claim or any denial of liability in whole or in part by the insurer shall be excluded in applying this provision. Delay in the giving of such notice shall not impair the insured's right to any indemnity which would otherwise have accrued during the period of six (6) months preceding the date on which such notice is actually given."

Approved March 12, 1974

## CHAPTER NO. 190

AN ACT TO AMEND SECTIONS 68-1503, 68-1607, 68-1904, 68-2202 THROUGH 68-2305, 82A-210, R.C.M. 1947, TO UPDATE PUBLIC EMPLOYEES' RETIREMENT SYSTEM.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 68-1503, R.C.M. 1947, is amended to read as follows:

"68-1503. **Definitions.** Unless the context requires otherwise, in this act:

(1) "Retirement system" means the public employees' retirement system created by this act.

(2) "Head of department" means the head of any department, institution or branch of the state service which directly pays salaries out of its income or which prepares, approves and submits salary statements of its employees to the department of administration, state auditor and state treasurer for payment.

(3) "Member" means any person included in the membership of the retirement system set forth in section 68-1601 and not excluded in section 68-1602, 68-1603 or 68-2510.

(4) "Board" means the board of administration provided for in section 82A-210.

(5) "Employee" means any person employed by an employer in any capacity whatever and whose salary is paid either by warrant of the employer or from the fees or income of any department or agency of the employer. "Employee" means further any person deemed such pursuant to section 68-2510.

(6) "Retirement fund" means the public employees' retirement account in the agency fund.

(7) "Service" means employment of an employee, except as provided in sections 68-1604 and 68-1605.

(8) "Prior service" shall mean all service rendered as an employee of

the state before July 1, 1945, and all service rendered as an employee of a contracting employer before July 1, 1947. Prior service includes all service rendered prior to July 1, 1945, as a member of the legislative assembly or lieutenant governor of the state of Montana.

(9) "Beneficiary" means the person so designated pursuant to section 68-2401.

(10) "Compensation" means remuneration paid out of funds controlled by an employer. The compensation of each member of the legislative assembly and the lieutenant governor of the state of Montana for any year shall be deemed to be that portion of the product of the daily compensation for such position multiplied by three hundred sixty (360), upon which such member elects to pay normal contributions during the year.

(11) "Final compensation" means a member's highest average annual compensation during any three (3) consecutive years of membership service.

(12) "Regular interest" means interest at the rate set from time to time by the board.

(13) "Normal contributions" means contributions required by members under this act and any optional contributions, made under the provisions of sections 68-1605 and 68-1906.

(14) "Additional contributions" means contributions by members under the provisions of section 68-1903.

(15) "Accumulated normal contributions" means the sum of all the normal contributions standing to the credit of a member's individual account without interest.

(16) "Accumulated additional contributions" means the sum of all the additional contributions standing to the credit of a member's individual account, together with the regular interest thereon.

(17) "Accumulated contributions" means the sum of accumulated normal contributions and accumulated additional contributions.

(18) "Pension" means payments for life derived from contributions made from the state controlled funds, or in the case of members from contracting employers, from the funds of such contracting employers, as provided in this act.

(19) "Annuity" means payments for life derived from contributions made by a member as provided in this act.

(20) "Retirement allowance" means the periodic benefit payable following service, early or disability retirement.

(21) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the actuarial tables in use by the system.

(22) "Actuary" means the actuary retained by the board in accordance with section 68-1804.

(23) "Benefit" means the retirement allowance, survivorship allowance, death benefit or refund of accumulated contributions provided by this act.

(24) "Contracting employer" means any political subdivision or governmental entity which has contracted to come into the system.

(25) "Employer" means the state of Montana, its university or any of the colleges, schools, components or units thereof for the purposes of this act, or any political subdivision or governmental entity which has contracted to come into the system.

(26) "Membership service" means service with respect to which normal contributions and employer contributions are paid. A member of the legislative assembly and a lieutenant governor of the state of Montana shall be credited with membership service for that portion of each year for which he pays normal contributions pursuant to section 68-1503 (10).

(27) "Survivorship allowance" means payments for life to the beneficiary of a deceased member as provided in title 68, chapter 23.

(28) "Creditable service" means the aggregate of membership service and prior service. A member employed on a part-time basis shall receive credit for a year of service for each fiscal year during which such member was employed throughout the year and was engaged in his duties the full amount of time he was required by his employment to be so engaged.

(29) "Employer contributions" means payments to the retirement fund from appropriations of the state of Montana pursuant to section 68-2504 and from contracting employers pursuant to the contracts between them and the board.

(30) "Written application" means a written instrument duly executed and filed with the board and containing all information required by the board, including such proofs of age as the board shall deem necessary.

(31) "Retirement" means withdrawal from active service with a retirement allowance granted under the provisions of this act.

(32) "Disability" and "incapacity for performance of duty" referred to herein as a basis of retirement, means disability of permanent duration or disability of extended and uncertain duration, as determined by the board on the basis of competent medical opinion.

(33) "Fiscal year" means any year commencing with July 1 and ending June 30 next following."

Section 2. Section 68-1607, R.C.M. 1947, is amended to read as follows:

**"68-1607. Qualification of service with contracting employer.** Subject to the provisions of this section, any person who has service with a contracting employer which is not creditable service may convert all or a portion of such service to membership service by filing written notice thereof with the board of administration no later than July 1, 1975; provided that any such person who is not a member on July 1, 1974, may make such filing no later than one (1) year after subsequently becoming a member. In either event, such person must pay to the retirement system the sum of the amount which he and his employer would have contributed during the period of service so converted if the employer had then been



a contracting employer and the interest which would have accumulated thereon to the time of such payment; provided, that the employer may pay the employer's portion including accrued interest. Payment may be made in one sum at the time of such filing or on an installment basis. *Installment payments shall not exceed twenty-four (24) monthly payments. When the monthly payment, exceeds five percent (5%) of compensation in the initial month of payment the board of administration may allow smaller payments of a period to exceed twenty-four (24) months. Failure to make regular monthly payments in any month where the member receives his normal compensation shall thereafter, forfeit such person's right to make any further installment payments."*

Section 3. Section 68-1904, R.C.M. 1947, is amended to read as follows:

**"68-1904. Employer contribution to administrative expense.** (1) *The board of administration may assess, and the department of administration shall collect a fee for the purpose of defraying the administrative expense of this act not to exceed three-tenths of one percent (.3%) of gross compensation.*

(2) In addition to the contributions elsewhere provided in this act, on July 1 of each year each employer shall contribute on behalf of each member then in its employ a membership fee of one dollar (\$1). These fees together with other moneys appropriated for that purpose shall be used for the purpose of defraying the administrative expense of this act."

Section 4. Section 68-2202, R.C.M. 1947, is amended to read as follows:

**"68-2202. Disability allowance reduced by earnings.** Should the recipient of a retirement allowance because of disability engage in a gainful occupation during any month other than as an employee as defined in section 68-1503, the amount of his *retirement allowance* for that month shall be reduced to an amount which, when added to the compensation earned by him in that occupation, shall not exceed the amount of his monthly compensation at the time of his retirement."

Section 5. Section 68-2203, R.C.M. 1947, is amended to read as follows:

**"68-2203. Optional retirement allowance.** (1) The retirement allowance of a member who so elects shall be converted, in lieu of all other benefits under this act, into an optional retirement allowance which is the actuarial equivalent of such other allowance. The optional retirement allowance is a reduced amount payable during the member's lifetime with a subsequent benefit as follows:

(a) Option 1 — a death benefit to the member's beneficiary equal to the excess, if any, of the member's accumulated contributions with regular interest to the day his retirement allowance commenced over the total of his retirement allowance payments.

(b) Option 2 — a continuation of the reduced retirement allowance during the lifetime of his named contingent annuitant.

(c) Option 3 — a continuation of one-half (½) of the reduced retirement allowance during the lifetime of his named contingent annuitant.

(d) Option 4 — such other actuarially equivalent benefit as shall be approved by the board.

(2) Election of any optional retirement allowance shall be by written application filed prior to the first payment of the regular retirement allowance. The contingent annuitant named by the member must have an insurable interest in the life of the member.

(3) If either the member or his contingent annuitant should die before the member has received the first payment under option 2 or 3, the election of such option shall automatically be canceled.

(4) If a member dies after retirement and within thirty (30) days from the date his election or changed election of an optional retirement allowance is received by the board, then said election is void and of no effect, and the death shall be considered as that of a member before retirement."

Section 6. Section 68-2204, R.C.M. 1947, is amended to read as follows:

**"68-2204. Cancellation of retirement allowance upon re-employment.** (1) Any person receiving a retirement allowance who becomes an employee shall be considered reinstated from retirement and his retirement allowance shall be canceled. Upon subsequent retirement he shall be entitled to receive a recalculated benefit as provided in section 68-2003. Such recalculated benefit shall be based on his creditable service accumulated at the time of his previous retirement plus any creditable service accumulated subsequent to his re-employment. Except as otherwise expressly provided by law, he shall receive the benefit of provisions enacted subsequent to his initial retirement only if he accrues at least two (2) years of creditable service subsequent to his reinstatement and then only with respect to such creditable service.

(2) *Any person receiving a service retirement allowance not as a beneficiary who is not eligible for membership may return to covered employment for a period not to exceed sixty (60) working days in any fiscal year. The retirement allowance of a retiree so employed will be reduced by any earnings in excess of the minimum wage per month on one dollar (\$1) for one dollar (\$1) basis."*

Section 7. Section 68-2304, R.C.M. 1947, is amended to read as follows:

**"68-2304. Survivorship allowance elected by beneficiary.** A beneficiary eligible to receive a death benefit may elect a survivorship allowance instead if all of the following conditions are met:

(1) the member on behalf of whom the death benefit is payable *had completed ten (10) years of creditable service;*

(2) the beneficiary is a natural person of legal age with an insurable interest in the deceased at the time of his death;

(3) the beneficiary elects the survivorship allowance within ninety (90)

days of receipt of notice from the board that he is eligible to receive the death benefit. Election shall be by written application."

Section 8. Section 68-2305, R.C.M. 1947, is amended to read as follows:

"68-2305. **Amount of survivorship allowance.** The annual amount of survivorship allowance payable to a member's beneficiary shall be the actuarial equivalent of either:

(1) *the accrued portion of the service retirement allowance which would have been payable to the member commencing at age sixty (60) pursuant to section 68-2003, if he had not attained age sixty (60) at the time of his death; or*

(2) *if the deceased member had attained age sixty (60) or completed thirty (30) years of service at the time of his death, the service retirement allowance which would have been payable to the member if he had retired immediately prior to his death."*

Section 9. Section 82A-210, R.C.M. 1947, is amended to read as follows:

"82A-210. **Board of administration — composition — terms — allocated.** (1) *There is a board of administration.*

(2) *The board consists of five (5) members appointed by the governor. The members are:*

(a) *Three (3) public employees who shall be members of a public retirement system. Not more than one (1) of these members may be an employee of the same department.*

(b) *Two (2) members at large.*

(3) *The term of office for each member is five (5) years.*

(4) *The board is allocated to the department for administrative purposes only as prescribed in section 82A-108.*

(5) *Members of the board shall be paid their actual and necessary expenses and members of the board who are not members of the public retirement system shall be entitled, in addition to actual and necessary expenses, compensation as established for quasi-judicial board in section 82A-112(7)."*

Approved March 12, 1974

## CHAPTER NO. 191

AN ACT TO AMEND SECTION 81-915, R.C.M. 1947, TO PROVIDE FOR SETTING OF INTEREST RATES FOR THE SALE OF STATE LANDS.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 81-915, R.C.M. 1947, is amended to read as follows:

"81-915. **Terms of payment.** (1) Every purchaser of state land shall pay on the day of sale that portion of the purchase price as he may desire, but in no case less than ten percent (10%) of the total sales price, and in case the balance on the purchase price is not an exact multiple of twenty-five dollars (\$25), then he shall pay such additional sum as is necessary to reduce the balance to an even multiple of twenty-five dollars (\$25).

(2) The balance of the purchase price shall draw interest at the rate *set by the board, but in no instance shall the rate be less than five percent (5%) per year*, payable annually, and the balance of the purchase price itself shall be payable through a period of thirty-three (33) years on the amortization plan. This plan is defined as being that plan under which part of the principal is required to be paid each time interest becomes due and payable, and under which this part payment on the principal increases at each succeeding installment in the same amount that the interest payment decreases so that the combined amount due on principal and interest on each due date remains the same until the loan or bond is paid in full. However, the amount of the last installment may vary from the other installments to the extent resulting from disregarding fractional cents in the previous installments. The balance of the purchase price on town and city lots shall be payable on the amortization plan through a period of twenty (20) years, but the board may at any time fix a shorter period than twenty (20) years for the payment of the balance on town and city lots, and different periods of time may be established for different towns and cities as the best interests of the state demand. *The board shall annually review the interest rate prior to December 31 of each year and fix the interest rate for all contracts to be entered into during the succeeding year."*

Approved March 12, 1974

## CHAPTER NO. 192

AN ACT TO AMEND SECTION 89-867, R.C.M. 1947, TO PROVIDE THAT A USE OF WATER FOR SLURRY WHICH WILL BE EXPORTED FROM MONTANA IS NOT A BENEFICIAL USE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 89-867, R.C.M. 1947, is amended to read as follows:

"89-867. **Definitions.** Unless the context requires otherwise, in this act:

(1) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including geothermal water.

(2) "Beneficial use" means a use of water for the benefit of the appropriator, other persons, or the public, including, but not limited to,

agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses; *provided, however, that a use of water for slurry to export coal from Montana is not a beneficial use. Slurry is a mixture of water and insoluble matter.*

(3) "Appropriate" means to divert, impound, or withdraw (including by stock for stock water) a quantity of water, or in the case of a public agency to reserve water in accordance with section 89-890.

(4) "Existing right" means a right to the use of water which would be protected under the law as it existed prior to the effective date of this act.

(5) "Groundwater" means any water beneath the land surface or beneath the bed of a stream, lake, reservoir, or other body of surface water, and which is not a part of that surface water.

(6) "Well" means any artificial opening or excavation in the ground, however made, by which groundwater is sought or through which it flows under natural pressures or is artificially withdrawn.

(7) "Permit" means the permit to appropriate issued by the department under sections 89-880 through 89-887.

(8) "Certificate" means the certificate of water right issued by the department under sections 89-879, 89-880 (4), and 89-888.

(9) "Declaration" means the declaration of an existing right filed with the department under section 89-872.

(10) "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility, or the application of water to anything but a beneficial use.

(11) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, and the United States or any agency thereof.

(12) "Department" means the department of natural resources and conservation provided for in Title 82A, chapter 15.

(13) "Director" means the director of natural resources and conservation, a position provided for in section 82A-1510.

(14) "Board" means the board of natural resources and conservation provided for in section 82A-1509."

Approved March 12, 1974

## CHAPTER NO. 193

AN ACT TO AMEND SECTION 75-7511, R.C.M. 1947, TO PROVIDE FOR A SELF-SUPPORTING MEDIA LIBRARY PROGRAM AND TO ESTABLISH A MEDIA LIBRARY REVOLVING FUND.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 75-7511, R.C.M. 1947, is amended to read as follows:

**"75-7511. State visual, aural and other educational media library.** A library of visual, aural and other educational media shall be established and maintained by the superintendent of public instruction. The media shall be selected by the superintendent of public instruction, on the basis of their usefulness as teaching aids and resources for schools and other educational groups within the state, and shall be made available to such schools and groups on a rental fee basis. *The rental fees for the use of the materials in the library shall be set by the superintendent of public instruction and shall be deposited in a media library revolving fund. The superintendent of public instruction may use these funds, as well as any other funds advanced by a legislative appropriation to the library media revolving fund, for the operation, maintenance, enlargement and other related costs of the library.*"

Approved March 12, 1974

## CHAPTER NO. 194

AN ACT AMENDING SECTION 92-705, R.C.M. 1947, RELATING TO THE PAYMENT OF WORKMEN'S COMPENSATION BURIAL EXPENSES, BY INCREASING THE MAXIMUM BURIAL EXPENSE PAYMENT FROM FIVE HUNDRED DOLLARS (\$500) TO ONE THOUSAND ONE HUNDRED DOLLARS (\$1,100).

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 92-705, R.C.M. 1947, is amended to read as follows:

**"92-705. Providing for payment of burial expense.** There shall be paid, in case of the death of an employee, which death is the result of an accidental injury arising out of the employment and happening in the course of the employment, the reasonable burial expenses of the employee, not exceeding *one thousand one hundred dollars (\$1,100)* and such payment is not a part of the compensation which might be paid but is a benefit in addition to and separate and apart from compensation."

Approved March 12, 1974

## CHAPTER NO. 195

AN ACT TO RAISE THE EXEMPTION FROM INHERITANCE TAX ALLOWED THE SURVIVING SPOUSE FROM TWENTY THOUSAND DOLLARS (\$20,000) TO TWENTY-FIVE THOUSAND DOLLARS (\$25,000), BY AMENDING SECTION 91-4414, R.C.M. 1947.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 91-4414, R.C.M. 1947, is amended to read as follows:

**"91-4414. Exemptions from first \$25,000.** The following exemptions from the tax are hereby allowed, the exemption allowed to each person, institution, association, corporation and body politic to be taken out of the first twenty-five thousand dollars passing by any such transfer to such person, institution, association, corporation or body politic:

(1) Transfers totally exempt. All property transferred to the state or any of its institutions, or to municipal corporations within the state for strictly county, city, town, or municipal purposes, shall be exempt. All property transferred to any society, corporation, institution, or association, in trust or otherwise, or to any foundation or trust, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, no part of the net earnings of which inures to the benefit of any private stockholder or individual, and no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation, shall be exempt, if any of the following conditions is present:

(a) The society, corporation, institution, foundation, trust, or association is organized solely for religious, charitable, scientific, literary, or educational purposes under the laws of this state or of the United States;

(b) The property transferred is limited for use within this state;

(c) In the event that the society, corporation, institution, foundation, trust, or association is organized or existing under the laws of another state of the United States or of a foreign state or country, at the date of the decedent's death any one of the following conditions existed:

(i) The other state, foreign state, or foreign country did not impose a legacy, succession, or death tax of any character in respect to property transferred to a similar society, corporation, institution, foundation, trust, or association organized or existing under the laws of this state;

(ii) The laws of the other state, foreign state, or foreign country contained a reciprocal provision under which property transferred to a similar society, institution, foundation, trust, or association organized or existing under the laws of another state of the United States or foreign state or country was exempt from legacy, succession or death taxes of every character, if the other state of the United States or foreign state or country allowed a similar exemption in respect to property transferred to a similar society, institution, foundation, trust, or association organized or existing under the laws of another state of the United States or foreign state or country;

(iii) The society, corporation, institution, foundation, trust, or association owns or operates a hospital for crippled children within the United States, primarily practicing orthopedics, to which crippled or afflicted children from the state of Montana are, without discrimination, gratuitously admitted and treated and the property transferred is limited for use at such hospital.

(2) *\$25,000; \$5,000; \$2,000 exempt, when.* Property of the clear value of *twenty-five* thousand dollars (*\$25,000*), transferred to the wife or to the husband of the decedent, five thousand dollars (*\$5,000*) transferred to each minor lineal issue of the decedent, or any minor child adopted as such in conformity with law, or any minor child to whom such decedent for not less than ten (10) years prior to such transfer stood in the mutually acknowledged relation of a parent, provided, however, such relationship began at or before the child's fifteenth (15) birthday, and was continuous for ten (10) years, or any minor lineal issue of such adopted or mutually acknowledged child, and two thousand dollars (*\$2,000*) transferred to each of the lineal issue who have attained majority and to each of the other persons who have attained majority described in the first subdivision of section 91-4409 shall be exempt. Such exemption to the wife or husband of the decedent shall include all statutory dower, curtesy and other allowances. Any child of the decedent shall be entitled to credit for so much of the tax paid by the wife or husband as applied to any property which shall thereafter be transferred by or from such husband or wife to any such child, provided the husband or wife does not survive said decedent to exceed ten years.

(3) *\$500 exempt, when.* Property of the clear value of five hundred dollars transferred to each of the persons described in the second subdivision of section 91-4409 shall be exempt.

(4) Property without the state exempt, when. No tax shall be imposed upon any tangible personal property of a resident decedent when such property is located without this state, and when the transfer of such property is subject to an inheritance or transfer tax in the state where located and which tax has actually been paid, secured or guaranteed, provided such property is not without this state temporarily nor for the sole purpose of deposit or safekeeping; and provided the laws of the state where such property is located allow a like exemption in relation to such property left by a resident of that state and located in this state."

Approved March 12, 1974

## CHAPTER NO. 196

AN ACT TO AMEND SECTION 3-208, R.C.M. 1947, RAISING THE HANDLING AND STORAGE CHARGES FOR GRAIN PUBLIC WAREHOUSEMEN COLLECT; AND AMENDING PROVISIONS RELATING TO CLEANING CHARGES AND CHARGE REDUCTIONS.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 3-208, R.C.M. 1947, is amended to read as follows:

"3-208. **Charges of public warehousemen.** Charges *may* be made by all public warehousemen subject to the provisions of this act, for the handling, *cleaning and* storage of grain, as follows:



(a) Not to exceed *six cents (6¢)* per bushel for receiving, elevating, weighing, and immediate delivery on car of the identical grain without mixing. Immediate delivery shall mean that the total period of assemblage and delivery does not exceed seventy-two (72) hours.

(b) *Not to exceed six cents (6¢)* per bushel for all grains except flax, for receiving, grading, weighing, elevating, and insuring. For flax this charge shall *not exceed seven cents (7¢)* per bushel.

(c) Not to exceed *eight cents (8¢)* per bushel for cleaning grain where there are cleaning facilities, in which case screenings shall be delivered to owner *at his request*.

(d) The charges for storage shall *not exceed*: one-twentieth of one cent per bushel for each day in storage after period of free storage has elapsed. *The first fifteen (15) days of storage shall be without charge.*

(e) Twenty-five per cent (25%) reduction for the above charges shall be allowed when the market price of wheat being sold at point of origin at time of sale is less than *two dollars and five cents (\$2.05)* per bushel *or any future target price.*

(f) The schedule of charges for cleaning shall be posted in a conspicuous place where grain is unloaded for cleaning.

Failure on the part of any public warehouseman to comply with the provisions of this act will render the licenses of such warehouseman subject to revocation and cancellation by the commissioner of agriculture."

Approved March 12, 1974

## CHAPTER NO. 197

AN ACT TO PROVIDE FOR THE ENFORCEMENT OF DETERMINATIONS MADE BY THE COMMISSIONER OF LABOR AND INDUSTRY AS PROVIDED FOR IN TITLE 41, CHAPTERS 13 AND 23, R.C.M. 1947.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is a new section to be numbered 41-1314.4, R.C.M. 1947, which reads as follows:

41-1314.4. **Court enforcement of commissioner's determination.** A determination by the commissioner of labor and industry made after a hearing as provided for in Title 41, chapters 13 and 23, R.C.M. 1947, may be enforced by application by the commissioner to a district court for an order or judgment enforcing the determination, if the time provided to initiate judicial review by the employer has passed. The commissioner shall apply to the district court where the employer has its principal place of business, or in the first judicial district of the state. A proceeding under this section is not a review of the validity of the commissioner's determination.

Approved March 12, 1974

## CHAPTER NO. 198

AN ACT TO AMEND THE RESTAURANT, BAR AND TAVERN WAGE

PROTECTION ACT, REMOVING THE LIABILITY OF LESSORS FOR UNPAID WAGES OF LESSEE'S EMPLOYEES, AMENDING SECTIONS 41-2002, 41-2003, 41-2004, 41-2005, AND 41-2006, R.C.M. 1947, AND REPEALING SECTIONS 41-2007, 41-2009, AND 41-2011, R.C.M. 1947.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 41-2002, R.C.M. 1947, is amended to read as follows:

"41-2002. **Bond required of lessee.** From and after the effective date of this act, it shall be unlawful for any person to lease a premise to be used as the place for conducting a restaurant, bar or tavern business, without first having filed with the commissioner of labor and industry a bond in accordance with the requirements of section 41-2005."

Section 2. Section 41-2003, R.C.M. 1947, is amended to read as follows:

"41-2003. **Purpose of act.** The purpose of this act is to protect employees of lessees conducting business as restaurants, bars and taverns and to assure the payment of wages to such employees in the event the lessee ceases operation of his business and is unable to pay the wages due and owing to his employees."

Section 3. Section 41-2004, R.C.M. 1947, is amended to read as follows:

"41-2004. **Definition of terms.** For the purposes of this act the words and phrases used herein have the following meaning:

(1) "Person" includes any establishment, firm, partnership, corporation, person or association of persons.

(2) "Restaurant" means a public eating house where food is prepared and served for human consumption on the premises.

(3) "Lessee" means one to whom a lease is made.

(4) "Bar" or "tavern" means a house where liquor or beer are sold to be drunk on the premises.

(5) "Liquor" means and includes any alcoholic, spirituous, vinous, fermented, malt or other liquor, which contains more than one per centum (1%) of alcohol by weight, but shall not mean or include beer as that term is defined in the Montana Beer Act by subsection (b) of section 4-302, Revised Codes of Montana, 1947.

(6) "Beer" means any beverage obtained by alcoholic fermentation of an infusion or decoction of barley, malt and hops, or of any similar products, in drinkable water, containing not more than four per centum (4%) alcohol by weight.

(7) "Employee" means a person who works for wages or salary in the service of an employer.

(8) "Business" means a commercial enterprise of any kind involving the buying and selling of goods."

Section 4. Section 41-2005, R.C.M. 1947, is amended to read as follows:

"41-2005. **Bond to be filed by lessee—amount—ownership affidavit.** Every person who leases from another person premises for the purpose of conducting therein a business as a restaurant, bar or tavern is hereby required to file a bond equal to at least double the amount of the *projected* semi-monthly payroll with the commissioner of labor and industry."

Section 5. Section 41-2006, R.C.M. 1947, is amended to read as follows:

"41-2006. **Time of filing of bond—terms of bond—maintenance of bond required.** The bond and affidavit required by section 41-2005 shall be filed with the commissioner of labor and industry. The state of Montana shall be named as the obligee therein with good and sufficient sureties to be approved by the attorney general of the state of Montana. Said bond shall at all times be kept in full force and effect and any cancellation or revocation thereof or withdrawal of the sureties therefrom shall automatically revoke and suspend the certificate issued to the lessee of this act until such time as a new bond of like tenure and effect shall have been filed and approved as herein provided. Such bond shall be conditioned to assure that in any lease transaction of the type referred to in section 41-2002 the persons who perform labor or other personal services for the lessee are guaranteed their wages in the event the lessee ceases operation of the business, for any reason, and is unable to pay the wages due and owing the employees."

Section 6. Sections 41-2007, 41-2009, and 41-2011, R.C.M. 1947, are repealed.

Approved March 12, 1974

## CHAPTER NO. 199

AN ACT TO REQUIRE LICENSEES CONDUCTING HORSE RACE MEETINGS TO PAY TO THE DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING FOR DEPOSIT IN THE EARMARKED REVENUE FUND OF THE BOARD OF HORSE RACING ALL UNCLAIMED WINNING TICKET MONEY WITHIN THIRTY (30) DAYS OF THE CLOSE OF THE MEETING; AND PROVIDING FOR AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is a new section to be numbered 62-515, R.C.M. 1947, which reads as follows:

62-515. **Deposit of unclaimed money.** Each licensee holding a horse race meeting shall within thirty (30) days of the end of the meeting pay to the department of professional and occupational licensing for deposit in the earmarked revenue fund for the board of horse racing all unclaimed winning ticket money from any pari-mutuel pool.

Section 2. **Effective date.** This act is effective on its passage and approval.

Approved March 12, 1974

## CHAPTER NO. 200

AN ACT TO PROVIDE A GRADUATED SCALE FOR STORE LICENSE FEES PAID BY RETAIL CHAIN STORES; AMENDING SECTION 84-2405, R.C.M. 1947.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 84-2405, R.C.M. 1947, is amended to read as follows:

"84-2405. **Retailers subject to act — license fees for.** Every person, firm, corporation, association, copartnership or group opening, establishing, operating or maintaining one (1) or more retail stores or mercantile establishments, within this state, under the same general management, supervision or ownership, where a stock of goods is maintained during any portion of the year, regardless of whether the stock is held by ownership, consignment, agency or any other means, shall pay the license fee hereinafter prescribed for the privilege of opening, establishing, operating, or maintaining such stores or mercantile establishments, provided that the members of any group, association or consumer co-operative composed of independent units owning their own business and grouped or associated together by agreement or otherwise for the purpose of purchasing or selling merchandise or service for the mutual benefit of the members shall not be grouped for computing the license fee to be paid by the person, firm, corporation, association, or copartnership or retailer under this act, but the units or members shall be taxed as individual units.

The license fee herein prescribed shall be paid annually.

The annual license fees herein prescribed *for retail stores or mercantile establishments which have gross receipts in excess of three hundred fifty thousand dollars (\$350,000) per year* shall be as follows:

1. Upon one store the annual license fee shall be eleven dollars (\$11).
2. Upon the second store, the annual license fee shall be fifty-six dollars (\$56).
3. Upon the third store, the annual license fee shall be one hundred and six dollars (\$106).

4. Upon the fourth store, the annual license fee shall be one hundred and fifty-six dollars (\$156).

5. Upon the fifth store, and on each store in excess of five (5) stores, the annual license fee shall be two hundred and six dollars (\$206).

*The annual license fees herein prescribed for retail stores or mercantile establishments which do not have gross receipts in excess of three hundred fifty thousand dollars (\$350,000) per year shall be as follows:*

1. *Upon one store the annual license fee shall be eleven dollars (\$11).*

2. *Upon the second store, the annual license fee shall be thirteen dollars and fifty cents (\$13.50).*

3. *Upon the third store, the annual license fee shall be twenty-one dollars (\$21).*

4. *Upon the fourth store, the annual license fee shall be twenty-eight dollars and fifty cents (\$28.50).*

5. *Upon the fifth store, the annual license fee shall be thirty-six dollars (\$36).*

6. *Upon the sixth store, and each store in excess of six (6), the annual license fee shall be forty-four dollars and fifty cents (\$44.50).*

*For the purpose of determining the number of stores or units in the chain, all stores or units in the chain shall be included regardless of size even though one or more stores or units may be included in a different category for this license, provided the larger stores or units shall be counted last."*

Approved March 12, 1974

## CHAPTER NO. 201

AN ACT TO AMEND SECTION 16-1015, R.C.M. 1947, TO DELETE ANY REFERENCE TO SALES RATIO STUDIES FOR THE COUNTY GENERAL FUND LEVY.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 16-1015, R.C.M. 1947, is amended to read as follows:

"16-1015. **Taxation.** The board of county commissioners has jurisdiction and power under such limitations and reservations as are prescribed by law to levy such tax annually on the taxable property of the county, for county purposes as may be necessary to defray the current expenses thereof, including the salaries otherwise unprovided for, not exceeding twenty-seven (27) mills, on each dollar of the taxable valuation for any one (1) year for counties of the fourth, fifth, sixth and seventh classes, and twenty-five (25) mills on each dollar of the taxable valuation for any

one (1) year for counties of the first, second and third classes and to levy such taxes as are required to be levied by special or local statutes.”

Approved March 14, 1974

## CHAPTER NO. 202

AN ACT TO AMEND SECTION 11-950, R.C.M. 1947, TO INCREASE THE AUTHORIZED FINES AND PENALTIES FOR VIOLATION OF A CITY ORDINANCE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 11-950, R.C.M. 1947, is amended to read as follows:

“11-950. **Penalties for violations of ordinances — limitations.** The city or town council has power: To impose fines and penalties for the violation of any city ordinance, but no fine or penalty *may* exceed *five* hundred dollars (\$500), and no imprisonment *may* exceed *six (6) months* for any one offense.”

Approved March 14, 1974

## CHAPTER NO. 203

AN ACT CONTINUING PAYMENTS FOR SILICOSIS TO A SURVIVING SPOUSE AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is a new section to be numbered 71-1010, R.C.M. 1947, which reads as follows:

71-1010. **Surviving spouse of person receiving silicosis payments — payments continue.** Upon the death of a person receiving payments for silicosis under section 71-1003, R.C.M. 1947, the surviving spouse, as long as such spouse remains unmarried, is entitled to receive the payments granted the deceased spouse.

Section 2. This act is effective upon its passage and approval.

Approved March 14, 1974

## CHAPTER NO. 204

AN ACT KNOWN AS THE “MONTANA SMALL BUSINESS PURCHAS-

ING ACT" AUTHORIZING STATE AGENCIES TO SET ASIDE SPECIFIED COMMODITIES, EQUIPMENT OR SERVICES FOR BIDDING BY SMALL BUSINESSES.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is a new section to be numbered 82-1929, R.C.M. 1947, which reads as follows:

82-1929. **Short title.** This act shall be known and may be cited as the "Montana Small Business Purchasing Act."

Section 2. There is a new section to be numbered 82-1930, R.C.M. 1947, which reads as follows:

82-1930. **Statement of purpose and policy.** It is the purpose of this act and is hereby declared to be the policy of this state that, whereas the existence of a strong and healthy free enterprise system is directly related to the well-being and competitive strength of small business concerns, and to the opportunity for small businesses to have free entry into business, to grow and to expand, the state shall insure that a fair proportion of its total purchases and contracts for property and services be placed with small business concerns.

Section 3. There is a new section to be numbered 82-1931, R.C.M. 1947, which reads as follows:

82-1931. **Definitions.** As used in this act, unless the context requires otherwise:

(1) "Department" means any department, division or agency of the state of Montana.

(2) "Small business" means a business which is independently owned and operated, and which is not dominant in its field of operation. The department of administration shall establish a detailed definition by rule, using in addition to the foregoing criteria, other criteria. Small business shall further mean all business domiciled in the state of Montana or one that employs more than fifty percent (50%) of its total employed personnel within the boundaries of the state of Montana.

(3) "Small business set-aside" means a purchase request for which bids are to be invited and accepted only from small businesses by a department.

Section 4. There is a new section to be numbered 82-1932, R.C.M. 1947, which reads as follows:

82-1932. **Small business set-asides — designation.** Each department has authority to designate as small business set-asides specified commodities, equipment, or services except those services rendered and furnished by registered professions such as, but not limited to, accountants, attorneys, architects, dentists, engineers, land surveyors, optometrists, physicians, pharmacists for which purchase has been requested under the Montana Small Business Purchasing Act. Such a designation

shall be made prior to the advertisement for bids in a daily state newspaper, and when the advertisement is published it shall indicate the purchases which have been designated small business set-asides. To effectuate the purposes of this act, a department shall exercise this authority whenever there is a reasonable expectation that bids will be obtained from at least three (3) small businesses capable of furnishing the desired property or service at a fair and reasonable price.

In the case of purchase designated as small business set-asides, invitations to bid shall be confined to small businesses and bids from other businesses shall be rejected. The purpose, contract or expenditure of funds shall be awarded to the lowest responsible bidder among the small businesses (considering conformity with specifications and terms) in accordance with the rules and regulations for purchasing published by the department.

Section 5. There is a new section to be numbered 82-1933, R.C.M. 1947, which reads as follows:

**82-1933. Insufficient bids — withdrawal of set-asides.** If the total number of small businesses responding to the invitation to bid and considered capable of meeting the specifications and terms of the invitation to bid is less than three (3), or if a department determines that acceptance of the best bid will result in the payment of an unreasonable price, the department shall reject all bids and withdraw the designation of small business set-aside.

If a department withdraws the designation of small business set-aside it shall notify the bidders of the reason why the bids were rejected. Invitations to bid containing the same or rewritten specifications and terms shall then be re-issued under the Montana Small Business Purchasing Act, without the designation of small business set-aside.

Section 6. There is a new section to be numbered 82-1934, R.C.M. 1947, which reads as follows:

**82-1934. Advertisement of successful bidder.** After the successful bidder has been determined, the department shall place an advertisement in a daily newspaper indicating that all bids submitted on a small business set-aside have been opened and reporting the name and address of the successful bidder. A department shall send a purchase order to the successful bidder no later than fourteen (14) days after the appearance of the advertisement announcing the successful bidder.

Section 7. There is a new section to be numbered 82-1935, R.C.M. 1947, which reads as follows:

**82-1935. Preference to Montana small business.** When the best bid is made by a domestic Montana small business and it is the same as another bid, preference shall be given to such Montana concern.

Section 8. There is a new section to be numbered 82-1936, R.C.M. 1947, which reads as follows:

**82-1936. Construction with other sections.** Procurement from small businesses under this act is subject to all other statutes governing state



procurement and all rules promulgated thereunder, as now or hereafter amended, except that in case of conflict this act governs and the provisions set forth in 82-1920, 82-1924 and 82-1926, shall not apply.

Section 9. There is a new section to be numbered 82-1937, R.C.M. 1947, which reads as follows:

82-1937. **Severability.** If any section in this act or any part of any section is declared invalid or unconstitutional such declaration of invalidity shall not affect the validity of the remaining portions thereof.

Approved March 14, 1974

## CHAPTER NO. 205

AN ACT AMENDING SECTION 32-2150.3, R.C.M. 1947, BY REMOVING THEREFROM THE REQUIREMENT THAT SIGNS INDICATING THE USE OF RADAR BE POSTED.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 32-2150.3, R.C.M. 1947, is amended to read as follows:

"32-2150.3. **Erection of signs.** (a) No operator of a motor vehicle may be arrested under this act unless signs have been placed at or near the state line on the primary highway system, outside towns or cities having over two thousand five hundred (2,500) population, and outside county seats on the primary highways to indicate the legal rate of speed.

(b) Any municipality which uses radiomicro waves or other electrical device for law enforcement purposes shall erect and maintain appropriate signs giving notice of such use at a conspicuous place at or near the corporate limits of the municipality, upon each state highway and arterial street or highway entering the municipality, and at such other places as may be deemed necessary by the municipal authorities for the information of the traveling public.

(c) *Signs giving notice that the speed of vehicles may be measured by radiomicro waves or other electrical device shall be placed as required for speed signs in subsection (a) above, provided, however, that the absence of such signs shall not, in itself, invalidate an otherwise proper arrest."*

Approved March 14, 1974

## CHAPTER NO. 206

AN ACT AMENDING SECTION 32-2137, R.C.M. 1947, TO AUTHORIZE RIGHT TURNS AT INTERSECTIONS ON EXHIBITION OF RED OR STOP SIGNALS.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 32-2137, R.C.M. 1947, is amended to read as follows:

**"32-2137. Traffic-control signal legend.** Whenever traffic is controlled by traffic-control signals exhibiting the words "Go," "Caution," or "Stop," or exhibiting different colored lights successively one at a time, or with arrows, the following colors only shall be used and said terms and lights shall indicate and apply to drivers of vehicles and pedestrians as follows:

(a) Green Alone or "Go":

1. Vehicular traffic facing the signal may proceed straight through or turn left or right unless a sign at such place prohibits either such turn. But vehicular traffic, including vehicles turning right or left, shall yield the right of way to other vehicles and to pedestrians lawfully within the intersection of an adjacent crosswalk at the time such signal is exhibited.

2. Pedestrians facing the signal may proceed across the roadway within any marked or unmarked crosswalk.

(b) Yellow Alone or "Caution" When Shown Following the Green or "Go" Signal:

1. Vehicular traffic facing the signal is thereby warned that the red or "Stop" signal will be exhibited immediately thereafter and such vehicular traffic shall not enter or be crossing the intersection when the red or "Stop" signal is exhibited.

2. Pedestrians facing such signals are thereby advised that there is insufficient time to cross the roadway, and any pedestrian then starting to cross shall yield the right of way to all vehicles.

(c) Red Alone or "Stop":

1. Vehicular traffic facing the signal shall stop before entering the crosswalk on the near side of the intersection or, if none, then before entering the intersection and shall remain standing until green or "Go" is shown alone *or until a right turn can safely be made and in making such turn vehicular traffic must yield the right of way to pedestrians lawfully within the crosswalk and to other traffic lawfully using the intersection. If a traffic sign legend indicating that no right turn on red may be made after a stop is posted at said intersection, such movement cannot be made until green or "Go" is shown alone.*

2. No pedestrian facing such signal shall enter the roadway unless he can do so safely and without interfering with any vehicular traffic.

(d) Red with Green Arrow:

1. Vehicular traffic facing such signal may cautiously enter the intersection only to make the movement indicated by such arrow but shall yield the right of way to pedestrians lawfully within the crosswalk and to other traffic lawfully using the intersection.

2. No pedestrian facing such signal shall enter the roadway unless he can do so safely and without interfering with any vehicular traffic.

(e) Traffic Control Signal at Place Other Than Intersection:

1. In the event an official traffic-control signal is erected and maintained at a place other than an intersection, the provisions of this section shall be applicable except as to those provisions which by their very nature can have no application.

2. Any stop required shall be made at a sign or marking on the pavement indicating where the stop shall be made, but in the absence of any such sign or marking the stop shall be made at the signal."

Approved March 14, 1974

## CHAPTER NO. 207

AN ACT PERMITTING INCORPORATION OF FIRMS ENGAGED IN THE PRACTICE OF PUBLIC ACCOUNTING; REGULATING SUCH PRACTICE; AND PROVIDING FOR THE REGISTRATION OF SUCH CORPORATIONS; AND AMENDING SECTIONS 66-1832, 66-1835, AND 66-1838, R.C.M. 1947.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is a new section to be numbered 66-1829.1, R.C.M. 1947, which reads as follows:

**66-1829.1. Corporations composed of certified public accountants — registration thereof.** A professional service corporation organized for the practice of public accounting may register with the board as a corporation of certified public accountants provided it meets the following requirements:

(1) The sole purpose and business of the corporation must be to furnish to the public services not inconsistent with the public accounting act or the regulations of the board; provided, that the corporation may invest its funds in a manner not incompatible with the practice of public accounting.

(2) At least one (1) shareholder thereof must be a certified public accountant of this state in good standing, and must hold a license issued under section 66-1833 which is in effect.

(3) Each shareholder of the corporation must be a certified public accountant of some state in good standing and must be principally employed by the corporation or actively engaged in its business. No other person shall have any interest in the stock of the corporation. The principal of the corporation and any officer or director having authority over the practice of public accounting by the corporation must be a certified public accountant of some state in good standing.

(4) Each shareholder of the corporation personally engaged within this state in the practice of public accounting as a member thereof must be a certified public accountant of this state in good standing and must hold a license issued under section 66-1833 which is in effect.

(5) Each staff member who is employed within this state, and who is certified under section 66-1819 or registered under section 66-1820, must also hold a license issued under section 66-1833 which is in effect.

(6) In order to facilitate compliance with the provisions of this section relating to the ownership of stock, there must be a written agreement binding the corporation or the qualified shareholders to purchase any shares offered for sale by, or not under the ownership or effective control of, a qualified shareholder and binding any shareholder not a qualified shareholder to sell such shares to the corporation or the qualified shareholders. The agreement must be noticed on each certificate of corporate stock.

Application for such registration must be made upon the affidavit of a shareholder who holds a permit to practice in this state as a certified public accountant. The board shall in such case determine whether the applicant is eligible for registration. A corporation which is so registered may use the words "certified public accountant" or the abbreviation "CPA's" in connection with its corporation name. Notification shall be given the board within one (1) month after the admission or withdrawal of a shareholder of a corporation so registered.

Section 2. There is a new section to be numbered 66-1831.1, R.C.M. 1947, which reads as follows:

**66-1831.1. Corporations composed of public accountants — registration thereof.** A professional service corporation organized for the practice of public accounting may register with the board as a corporation of public accountants provided it meets the following requirements:

(1) The sole purpose and business of the corporation must be to furnish to the public services not inconsistent with the public accounting act or the regulations of the board; provided, that the corporation may invest its funds in a manner not incompatible with the practice of public accounting.

(2) At least one (1) shareholder thereof must be a certified public accountant or public accountant of this state in good standing, and must hold a license issued under section 66-1833 which is in effect.

(3) Each shareholder of the corporation must be a certified public accountant or public accountant of some state in good standing and must be principally employed by the corporation or actively engaged in its business. No other person shall have any interest in the stock of the corporation. The principal of the corporation and any officer or director having authority over the practice of public accounting by the corporation must be a certified public accountant or public accountant of some state in good standing.

(4) Each shareholder of the corporation personally engaged within this state in practice of public accounting as a member thereof must be a certi-

fied public accountant or public accountant of this state in good standing and must hold a license issued under section 66-1833 which is in effect.

(5) Each staff member who is employed within this state, and who is certified under section 66-1819 or registered under section 66-1820, must also hold a license issued under section 66-1833 which is in effect.

(6) In order to facilitate compliance with the provisions of this section relating to the ownership of stock, there must be a written agreement binding the corporation or the qualified shareholders to purchase any shares offered for sale by, or not under the ownership or effective control, of a qualified shareholder and binding any shareholder not a qualified shareholder to sell such shares to the corporation or the qualified shareholders. The agreement must be noticed on each certificate of corporate stock.

Application for such registration must be made upon the affidavit of a shareholder who holds a permit to practice in this state as a certified public accountant or public accountant. The board shall in such case determine whether the applicant is eligible for registration. A corporation which is so registered may use the words "public accountant" or the abbreviation "PA's" in connection with its corporation name. Notification shall be given the board within one (1) month after the admission or withdrawal of a shareholder of a corporation so registered.

Section 3. Section 66-1832, R.C.M. 1947, is amended to read as follows:

"66-1832. **Registration of offices.** Each office established or maintained in this state for the practice of public accounting in this state by a certified public accountant or a partnership or corporation of certified public accountants or by a licensed public accountant or a partnership or corporation of licensed public accountants or by one registered under section 66-1828 shall be registered annually under this act with the department, but a fee may not be charged for this registration. The principals of sole proprietorships and all staff employees who are employed in this state and who are holders of certificates as certified public accountants must also hold a license issued under section 66-1833 which is in effect; partnerships and corporations must be registered under section 66-1829 or section 66-1831, whichever is applicable, and foreign accountants under the provisions of section 66-1828."

Section 4. Section 66-1835, R.C.M. 1947, is amended to read as follows:

"66-1835. **Revocation or suspension of partnership or corporation registration.** After notice and hearing as provided in section 66-1836, the board shall revoke the registration of a partnership or corporation if at any time it does not have all the qualifications prescribed by the section of this act under which it qualified for registration."

Section 5. Section 66-1838, R.C.M. 1947, is amended to read as follows:

"66-1838. **Acts declared unlawful.** (a) No person shall assume or use the title or designation "certified public accountant" or the abbreviation

"CPA" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such person is a certified public accountant unless such person has received a certificate as a certified public accountant under section 66-1819, holds a license issued under section 66-1833, which is not revoked or suspended, and all of such person's offices in this state for the practice of public accounting are maintained and registered as required under section 66-1832; provided however, that a foreign accountant who has registered under the provisions of section 66-1828, and who holds a current license issued under section 66-1833, may use the title under which he is generally known in his country, followed by the name of the country from which he received his certificate, license or degree.

(b) No partnership or corporation shall assume or use the title or designation "certified public accountant" or the abbreviation "CPA" or any other title, designation, words, letters, abbreviation, sign, card or device tending to indicate that such partnership or corporation is composed of certified public accountants unless it is registered under section 66-1829, and all of its offices in this state for the practice of public accounting are maintained and registered as required under section 66-1832.

(c) No person shall assume or use the title or designation "licensed public accountant," "public accountant," or any other title, designation, words, letters, abbreviations, sign, card or device tending to indicate that such person is a public accountant, unless such person is registered as a licensed public accountant under section 66-1820, holds a current license issued under section 66-1833 and all of such person's offices in this state for the practice of public accounting are maintained and registered as required under section 66-1832, or unless such person has received a certificate as a certified public accountant under section 66-1819, holds a current license issued under section 66-1833 and all of such person's offices in this state for the practice of public accounting are maintained and registered as required under section 66-1832.

(d) No partnership or corporation shall assume or use the title or designation "licensed public accountants," "public accountant," or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such partnership or corporation is composed of public accountants, unless it is registered under section 66-1831 or under section 66-1829 and all of its offices in this state for the practice of public accounting are maintained and registered as required under section 66-1832.

(e) No person, corporation or partnership shall assume or use the title or designation "certified accountant," "chartered accountant," "enrolled accountant," "licensed accountant," "registered accountant," or any other title or designation likely to be confused with "certified public accountant," "licensed public accountant," "public accountant," or any of the abbreviations "CA," "EA," "RA," or "LA," or similar abbreviations likely to be confused with "CPA"; provided, however, that anyone who holds a current license issued under section 66-1833 and all of whose offices in the state for the practice of public accounting are maintained and registered as required under section 66-1832 may hold himself out to the public as an "accountant" or "auditor," as provided in subparagraphs (a),

(b), (c) and (d); and provided, further, that a foreign accountant registered under section 66-1828 who holds a current license issued under section 66-1833 and all of whose offices in this state for the practice of public accounting are maintained and registered as required under section 66-1832 may use the title under which he is generally known in this country, followed by the name of the country from which he received his certificate, license or degree.

(f) No person shall sign or affix his name or any trade or assumed name used by him in his profession or business, with any wording indicating that he is an accountant or auditor, or with any wording indicating that he has expert knowledge in accounting or auditing, to any accounting or financial statement, or to any opinion on, report on, or certificate to any accounting or financial statement, unless he holds a current license issued under section 66-1833, and all of his offices in this state for the practice of public accounting are maintained and registered under section 66-1832; provided, however, that the provisions of this subsection shall not prohibit any officer, employee, partner or principal or any organization from affixing his signature to any statement or report in reference to the financial affairs of said organization with any wording designating the position, title or office which he holds in said organization, nor shall the provisions of this subsection prohibit any act of a public official or public employee in the performance of his duties as such.

(g) No person shall sign or affix a partnership or corporation name with any wording indicating that it is a partnership or corporation composed of accountants or auditors or persons having expert knowledge in accounting or auditing, to any accounting or financial statement, or to any report on or certificate to any accounting or financial statement, unless the partnership or corporation is registered under this act, and all of its offices in this state for the practice of public accounting are maintained and registered as required under section 66-1832.

(h) No person shall assume or use the title or designation "certified public accountant" or "public accountant" in conjunction with names indicating or implying that there is a partnership or corporation or in conjunction with the designation "and Company," or "and Co." or a similar designation if, in any such case, there is in fact no bona fide partnership or corporation registered under sections 66-1829 or 66-1831; provided that a sole proprietor or partnership lawfully using such title or designation in conjunction with such names or designation on the effective date of this act, may continue to do so if he or it otherwise complies with the provisions of this act; and provided, further, that it shall be lawful for a sole proprietor to continue the use of the deceased's name in connection with his business for a reasonable period of time after the death of a former partner."

Approved March 14, 1974

## CHAPTER NO. 208

AN ACT AMENDING SECTION 71-307, R.C.M. 1947, MAKING IT

MANDATORY FOR THE COUNTY DEPARTMENT OF PUBLIC WELFARE TO HAVE A RECIPIENT OF GENERAL RELIEF WORK IF THE COUNTY HAS WORK AVAILABLE WHICH A RECIPIENT IS CAPABLE OF PERFORMING.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 71-307, R.C.M. 1947, is amended to read as follows:

**"71-307. Relief by check or disbursing orders.** All relief disbursements by county departments of public welfare shall be by warrant or check; provided, however, that if the county welfare department finds that a recipient is in the habit of dissipating relief allowances instead of using them for the purposes intended, or that for any other reason it is better for the recipient and his family to receive the allowance through disbursing orders, then disbursing orders shall be used instead of cash payments; but all such disbursing orders must be written in such form that the goods and merchandise to be provided may be furnished by any regular dealer in such goods and merchandise within the county. *A recipient of general relief must register for employment with the State Employment Service and must accept available employment within his or her capability. Refusal to accept such employment will render the recipient ineligible for further general relief assistance.* It is further provided, however, that if the county has work available which a recipient of general relief is capable of performing, then the county department of public welfare may require the recipient to perform such work at the prevailing rate of wages paid by that county for similar work to be paid from the county poor fund in place of granting him general relief.

The county department of public welfare shall provide coverage under the Workmen's Compensation Act for those recipients of general relief working under the provisions hereof, and is authorized to enter into such agreements with the industrial accident board as may be necessary to carry out the provisions of this section.

Any recipient of general relief who is subject to the provisions of this section and who without cause refuses to perform work assigned to him as herein provided, shall lose his eligibility for general relief for a period of one (1) week for each refusal."

Approved March 14, 1974

## CHAPTER NO. 209

AN ACT AMENDING THE MONTANA STRIP MINING AND RECLAMATION ACT BY DELETING THE WORD "CLAY" IN SECTION 50-1036, R.C.M. 1947; AMENDING THE OPEN CUT MINING ACT BY INSERTING IN SECTIONS 50-1502, 50-1503, AND 50-1504, R.C.M. 1947, THE WORD "CLAY" AS ONE OF THE SUBSTANCES COVERED BY SAID ACT; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*



Section 1. Section 50-1036, R.C.M. 1947, is amended to read as follows:

"50-1036. **Definitions.** Unless the context requires otherwise in this act:

- (1) "mineral" means coal, phosphate rock, and uranium;
- (2) "overburden" means all of the earth and other materials which lie above a natural mineral deposit and also means such earth and other material after removal from their natural state in the process of strip mining;
- (3) "strip mining" means any part of the process followed in the production of mineral by the open cut method including mining by the auger method or any similar method which penetrates a mineral deposit and removes mineral directly through a series of openings made by a machine which enters the deposit from a surface excavation, or any other mining method or process in which the strata or overburden is removed or displaced in order to recover the mineral;
- (4) "prospecting" means the removal of overburden, core drilling, construction of roads or any other disturbance of the surface for the purpose of determining the location, quantity, or quality of a natural mineral deposit;
- (5) "area of land affected" means the area of land from which overburden is to be or has been removed and upon which the overburden is to be or has been deposited and includes all lands affected by the construction of new railroad loops and roads or the improvement or use of existing railroad loops and roads to gain access and to haul the mineral;
- (6) "operation" means all of the premises, facilities, railroad loops, roads, and equipment used in the process of producing and removing mineral from a designated strip mine area, or prospecting for the purpose of determining the location, quality, or quantity of a natural mineral deposit;
- (7) "operator" means a person engaged in strip mining who removes or intends to remove more than ten thousand (10,000) cubic yards of mineral or overburden;
- (8) "person" means a person, partnership, corporation, association, or other legal entity, or any political subdivision, or agency of the state;
- (9) "method of operation" means the method or manner by which the cut or open pit is made, the overburden is placed or handled, water is controlled and other acts are performed by the operator in the process of uncovering and removing the minerals that affect the reclamation of the area of land affected;
- (10) "topsoil" means the unconsolidated mineral matter naturally present on the surface of the earth that has been subjected to and influenced by genetic and environmental factors of parent material, climate, macro- and micro-organisms, and topography, all acting over a period of

time, and that is necessary for the growth and regeneration of vegetation on the surface of the earth;

(11) "department" means the department of state lands provided for in title 82A, chapter 11;

(12) "commissioner" means the commissioner of state lands provided for in section 82A-1104;

(13) "board" means the board of land commissioners provided for in article X, section 4 of the constitution of this state;

(14) "reclamation" means backfilling, grading, highwall reduction, topsoiling, planting, revegetation, and other work to restore an area of land affected by strip mining under a plan approved by the department;

(15) "degree" means from the horizontal, and in each case is subject to a tolerance of five percent (5%) error;

(16) "contour strip mining" means that strip mining method commonly carried out in areas of rough and hilly topography in which the coal or mineral seam outcrops along the side of the slope and entrance is made to the seam by excavating a bench or table cut at and along the site of the seam outcropping with the excavated overburden commonly being cast down the slope below the mineral seam and the operating bench;

(17) "bench" means the ledge, shelf, table, or terraces formed in the contour method of strip mining;

(18) "fill bench" means that portion of a bench or table which is formed by depositing overburden beyond or down slope from the cut section as formed in the contour method of strip mining;

(19) "abandoned" means an operation where no mineral is being produced and where the department determines that the operation will not continue or resume."

Section 2. Section 50-1502, R.C.M. 1947, is amended to read as follows:

**"50-1502. Policy of state.** It is the policy of this state to provide for the reclamation and conservation of land subjected to open cut bentonite, *clay*, sand or gravel mining. Therefore, it is the purpose of this act to preserve natural resources, to aid in the protection of wildlife and aquatic resources, to safeguard and reclaim through effective means and methods all agricultural, recreational, home and industrial sites subjected to or which may be affected by open cut bentonite, *clay*, sand or gravel mining to protect and perpetuate the taxable value of property, to protect scenic, scientific, historic or other unique areas, and to promote the health, safety and general welfare of the people of this state."

Section 3. Section 50-1503, R.C.M. 1947, is amended to read as follows:

**"50-1503. Contracts for reclamation of open cut mining land — enforcement of contracts.** The state board of land commissioners is hereby authorized to enter into contracts in the name of the state of Mon-

tana with operators which will provide for the reclamation of lands on which open cut mining of bentonite, *clay*, sand and gravel has been or is to be conducted. The state board of land commissioners is authorized to sue and be sued in the name of the state of Montana to enforce the provisions of any contract, and said board shall bring such court actions and take such other steps and actions as may be necessary to enforce the provisions of such contracts."

Section 4. Section 50-1504, R.C.M. 1947, is amended to read as follows:

"50-1504. **Definitions.** When used in this act, unless a different meaning clearly appears from the context:

(1) "Contract" means a mined land reclamation contract prepared by the commission to meet the requirements of this act.

(2) "Open cut mining" means the mining of bentonite, *clay*, sand or gravel by removing the overburden lying upon natural deposits thereof, and mining directly from the natural deposits thereby exposed, including the removal of overburden for the purpose of determining the location, quality or quantity of any natural deposit of bentonite, *clay*, sand or gravel.

(3) "Reclamation" means the reconditioning of the area of land affected by open cut mining operations to make the area suitable for productive use including but not limited to, forestry, agriculture, grazing, wildlife, recreation, residential and industrial sites.

(4) "Overburden" means all of the earth and other materials which lie above a natural deposit of bentonite, *clay*, sand or gravel. "Spoil" is the overburden disturbed from its natural state in the process of open cut mining.

(5) "Operator" means any person engaged in and controlling an open cut mining operation.

(6) "Affected land" means the area of land from which overburden is to be or has been removed and upon which the overburden is to be or has been deposited.

(7) "Commission" means the state board of land commissioners.

(8) "Person" means any natural person, or any firm, association, partnership, cooperative, corporation or any department, agency or instrumentality of the state or any governmental subdivision, or any other entity whatsoever.

(9) "Landowner" means the owner of land directly or indirectly affected by an open cut mining operation.

(10) "Public notice" means notice given by publication in a newspaper in the general area where the affected land is located. Such notice shall be given once a week for three (3) successive weeks.

(11) "Soils materials" are those horizons containing topsoil or other soils leached free of deleterious salts and capable of sustaining plant growth and recognized as such by standard authorities.

(12) "Refuse" means all waste material directly connected with the open cut mining operations.

(13) "Final cut" means the last pit created in an open cut mined area.

(14) "High wall" means that side of the pit adjacent to unmined land.

(15) "Reclamation plan" means the description of current land use, topographical data, water data, soils data, leased areas, intended mine areas and description of proposed reclamation of the land with appropriate maps.

(16) "Progress report" means a report showing the land which the operator has affected by open cut mining during the year. Such report shall show the number of acres of affected land and all reclamation accomplished."

Section 5. This act is effective on its passage and approval.

Approved March 14, 1974

## CHAPTER NO. 210

AN ACT REPEALING SECTIONS OF THE PUBLIC WELFARE ACT SUPPLANTED BY THE UNITED STATES SOCIAL SECURITY ACT AS OF JANUARY 1, 1974, REPEALING SECTIONS 71-401 THROUGH 71-411, 71-413, 71-601 THROUGH 71-607, 71-609 THROUGH 71-614, AND 71-1201 THROUGH 71-1210, R.C.M. 1947; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Sections 71-401, 71-402, 71-403, 71-404, 71-405, 71-406, 71-407, 71-408, 71-409, 71-410, 71-411, 71-413, 71-601, 71-602, 71-603, 71-604, 71-605, 71-606, 71-607, 71-609, 71-610, 71-611, 71-612, 71-613, 71-614, 71-1201, 71-1202, 71-1203, 71-1204, 71-1205, 71-1206, 71-1207, 71-1208, 71-1209, 71-1210, R.C.M. 1947, are repealed.

Section 2. This act is effective on its passage and approval.

Approved March 14, 1974

## CHAPTER NO. 211

AN ACT ALLOWING DISCRETION IN APPROVAL OF TUITION FOR HIGH SCHOOL STUDENTS IN CERTAIN CASES; AND AMENDING SECTION 75-6316, R.C.M. 1947; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 75-6316, R.C.M. 1947, is amended to read as follows:

"75-6316. **High school tuition.** Any child may be enrolled in and attend a high school outside of the county in which he resides when such high school is located in any county of the state of Montana or in a county of another state that is adjacent to the state of Montana. When a parent or guardian of a child wishes to have his child attend a school under the provisions of this section, he shall apply to the county superintendent of the county of his residence before the first day of July of the school fiscal year for which he seeks approval except in those cases when substantial changes in circumstances occurred subsequently to justify later application. Such application shall be made on a tuition agreement form supplied by the county superintendent and shall be approved by the trustees of the district where the child wishes to attend school and the county superintendent of the child's county of residence before permission to enroll in and attend a school outside of the county under the provisions of this section shall be granted.

The county superintendent shall approve a tuition application when a child lives closer to a high school of another county than any high school located within his resident county or, when due to road or geographic conditions, it is impractical to attend a high school in his resident county. *In approving such a tuition application the county superintendent is not required to approve a tuition application for a student seeking to attend a high school outside the state of Montana if the resident district provides transportation.* In approving a tuition agreement under this provision, the county superintendent may require the child to attend the high school closest to his residence. The county superintendent may approve any other tuition application that satisfies the geographic requirements of this section.

The trustees of the district where the child wishes to attend school shall approve or disapprove any tuition application submitted to them under the provisions of this section within fifteen (15) days after the receipt of the application.

The county superintendent shall notify the parent or guardian, and the trustees of the district where the child wishes to attend school of the tuition agreement approval or disapproval. If a tuition agreement is disapproved by the county superintendent, the parent may appeal such disapproval to the county superintendent for his reconsideration and, subsequently, to the superintendent of public instruction under the provision for the appeal of controversies in this Title. The approval of any tuition agreement by the approval agents or upon appeal shall authorize the child named in such agreement to enroll in and attend the school named in such agreement for the ensuing school fiscal year."

Section 2. This act shall be effective upon its passage and approval.

Approved March 14, 1974

## CHAPTER NO. 212

AN ACT TO PROVIDE FOR THE GIVING OF NOTICE OF PUBLIC

HEARINGS REGARDING THE REGULATION OF UTILITIES TO THE MONTANA CONSUMER COUNSEL; AND FOR MAKING REFERENCE TO THE AVAILABILITY OF THE MONTANA CONSUMER COUNSEL IN NOTICES OF HEARINGS BY ADDING THE FOLLOWING SECTIONS TO TITLE 70, R.C.M. 1947.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is a new section to be numbered 70-710, R.C.M. 1947, which reads as follows:

70-710. **Notice to be served on consumer counsel.** In addition to all other forms of notice of hearings conducted by the commission provided for in this Title, notices of all hearings shall be served upon the Montana consumer counsel.

Section 2. There is a new section to be numbered 70-711, R.C.M. 1947, which reads as follows:

70-711. **Notice to advise public of availability of consumer counsel.** All forms of notice of public hearings conducted by the public service commission under this Title, including all notices posted in public places or published in the legal advertising sections of newspapers, shall advise members of the consuming public of the existence of the office of the Montana consumer counsel and its availability to function on behalf of members of the consuming public.

Approved March 14, 1974

## CHAPTER NO. 213

AN ACT AMENDING SECTION 59-539, R.C.M. 1947, TO REVISE THE COMPUTATION OF PER DIEM ALLOWANCE FOR TRAVEL OF LESS THAN TWENTY-FOUR (24) HOURS, CHANGING REQUIRED DEPARTURE TIME FROM 8 TO 7 A.M.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 59-539, R.C.M. 1947, is amended to read as follows:

"59-539. **Computation of per diem allowance.** In computing the per diem in lieu of subsistence for continuous travel of more than twenty-four (24) hours, the calendar day, midnight to midnight, shall be the unit, and for fractional parts of a day at the commencement or ending of such continuous travel, constituting a travel period, one-fourth ( $\frac{1}{4}$ ) of the rate for a calendar day shall be allowed for each period of six (6) hours or fraction thereof. When a change in the per diem rate is made during a day, the rate of per diem in effect at the beginning of the quarter in which the change occurs shall continue to the end of such quarter. *Except as herein provided, for continuous travel of twenty-four (24) hours or less,*

constituting a travel period, such period shall be regarded as commencing with the beginning of the travel and ending with the completion thereof, and for each six (6) hour portion of the period or fraction thereof one-fourth ( $\frac{1}{4}$ ) of the rate for a calendar day shall be allowed. *For persons in state service regularly assigned to an 8 a.m. to 5 p.m. work period, the only per diem allowance shall be an amount not to exceed two dollars (\$2) per day for moneys actually expended for mid-day meals when the departure is at or after 7 a.m. and the return on the same day is at or prior to 6:00 p.m. For persons in state service regularly assigned to work periods other than 8 a.m. to 5 p.m., the employing department may establish a per diem allowance of an amount not to exceed one dollar and fifty cents (\$1.50) for moneys actually expended for morning meals and three dollars and fifty cents (\$3.50) for moneys actually expended for evening meals. In no case shall any per diem or allowance whatsoever be paid for any absence not exceeding three (3) hours."*

Approved March 14, 1974

## CHAPTER NO. 214

AN ACT TO ALLOW THE TWIN BRIDGES HIGH SCHOOL DISTRICT TO INCREASE ITS GENERAL FUND BUDGET IN EXCESS OF THE GENERAL FUND BUDGET AMOUNT ESTABLISHED IN SECTION 75-6905, R.C.M. 1947, BY THE AMOUNT OF TUITION PAID UNDER SECTION 75-6319, R.C.M. 1947, AND TO AMEND SECTION 75-6923, R.C.M. 1947 AND PROVIDING FOR AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 75-6923, R.C.M. 1947, is amended to read as follows:

"75-6923. **Additional levy for general fund and election for authorization to impose.** The trustees of any district may propose to adopt a general fund budget in excess of the general fund budget amount for such district as established by the schedule in section 75-6905 for any of the following purposes:

- (1) building, altering, repairing or enlarging any schoolhouse of the district;
- (2) furnishing additional school facilities for the district;
- (3) acquisition of land for the district;
- (4) proper maintenance and operation of the school programs of the district.

However, the trustees may not adopt a total general fund budget which exceeds one hundred seven percent (107%) of the general fund budget for the preceding year, unless such budget is adopted under conditions as provided in sections 75-6723 through 75-6730, or under the following conditions:

(a) new programs which are approved under 75-6903 or existing programs which are expanded as a result of ANB increases approved under 75-6903;

(b) federal programs which are continued with local funds if federal funds are withdrawn or withheld.

In subsection (2) (a), above, the budget may exceed 107% of the preceding year's budget by a dollar amount equal to the increase in the maximum budget without a vote resulting from the introduction of the new or expanded program and in subsection (2) (b), above, by a dollar amount not to exceed the amount received from federal sources for the preceding year. Nothing in this act shall prevent a school district from adopting a budget at least as large as the maximum budget without a vote as provided in section 75-6905.

When the trustees of any district determine that an additional amount of financing is required for the general fund budget that is in excess of the statutory schedule amount, the trustees shall submit the proposition of an additional levy to raise such excess amount of general fund financing to the electors who are qualified, under section 75-6410, to vote upon such proposition *except that the Twin Bridges high school district may increase its general fund budget as established by section 75-6905, R.C.M. 1947, by the amount of tuition paid to the district the previous year under section 75-6319, R.C.M. 1947.* Such special election shall be called and conducted in the manner prescribed by this Title for school elections. The ballot for such election shall state the amount of money to be raised by additional property taxation, the approximate number of mills required to raise such money, and the purpose for which such money will be expended, and it shall be in the following format:

#### PROPOSITION

Shall a levy be made in addition to the levies authorized by law in such number of mills as may be necessary to raise the sum of (state the amount to be raised by additional tax levy), and being approximately (give number) mills, for the purpose of (insert the purpose for which the additional tax levy is made)?

- ☐ FOR the additional levy.  
☐ AGAINST the additional levy.

If the election on any additional levy for the general fund is approved by a majority vote of those electors voting at such election, the proposition shall carry and the trustees may use any portion or all of the authorized amount in adopting the preliminary general fund budget. The trustees shall certify the additional levy amount authorized by such a special election on the budget form that is submitted to the county superintendent and the county commissioners shall levy such number of mills on the taxable value of all taxable property within the district as prescribed in section 75-6926, as are required to raise the amount of such additional levy.

Authorization to levy an additional tax under the provisions of this section shall be effective for only one school fiscal year and shall be



authorized by a special election conducted before the first day of August of the school fiscal year for which it is effective. Only one such additional levy for the maintenance and operation of the school programs of a high school district may be imposed by a high school district in a given school fiscal year."

Section 2. This act shall be effective upon passage and approval.

Approved March 14, 1974

## CHAPTER NO. 215

AN ACT ESTABLISHING AN EDUCATIONAL BROADCASTING COMMISSION; PRESCRIBING ITS POWERS AND DUTIES; AMENDING SECTION 82-3325; REPEALING SECTIONS 75-5710 AND 75-5711, R.C.M. 1947; AND PROVIDING FOR AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is a new section to be numbered 75-9001, R.C.M. 1947, which reads as follows:

75-9001. **Definition.** As used in this act, unless the context requires otherwise:

"Commission" means the educational broadcasting commission provided for in section 82A-511.

Section 2. There is a new section to be numbered 82A-511, R.C.M. 1947, which reads as follows:

82A-511. **Educational broadcasting commission — appointment — terms — allocation.** (1) There is an educational broadcasting commission.

(2) The commission consists of:

- (a) the superintendent of public instruction or his designee;
- (b) the commissioner of higher education or his designee;
- (c) the director of administration or his designee;

(d) five (5) residents of the state appointed by the governor from separate lists of ten (10) nominees provided by the board of public education and by the board of regents of higher education. No more than three (3) appointed members may be from a single United States congressional district.

(3) Each appointed member shall serve for a term of five (5) years. Of the first members appointed, the governor shall determine the terms so that one (1) term shall expire every year.

(4) The commission is allocated to the state board of education for

administrative purposes only as prescribed in section 82A-108 except that section 82A-108(2)(d) does not apply and the commission may hire its own personnel.

Section 3. There is a new section to be numbered 75-9002, R.C.M. 1947, which reads as follows:

**75-9002. Chairman — meetings — compensation.** (1) The commission shall elect a chairman from among its appointed members.

(2) The commission shall meet quarterly. Other meetings of the commission may be called by the chairman or by a majority of the members.

(3) Members are entitled to compensation as provided for in section 82A-112(7).

Section 4. There is a new section to be numbered 75-9003, R.C.M. 1947, which reads as follows:

**75-9003. Powers and duties.** The commission shall promote, establish, operate and maintain facilities to provide noncommercial educational programs to educational institutions and the general public of the state by standard broadcast or closed circuit transmission or by other electronic means. For that purpose, the commission shall have the following powers and duties:

(1) The commission may:

(a) acquire real and other property as an agency of the state and to hold, use and dispose of such property;

(b) apply for, receive and use in the furtherance of its lawful purpose state, federal or other funds as may be appropriated to it from time to time, any funds received for services rendered under contract and contributions, matching funds, gifts from any source whether state or federal, public or private unless the same be tendered subject to conditions inconsistent with the purpose of this chapter;

(c) contract for the construction, repair, maintenance and operation of its facilities;

(d) contract with common carriers, qualified under federal or state law to provide interconnecting telecommunications relays among its facilities if interconnecting telecommunications relays of the department of administration are not available;

(e) exercise such other powers as may be necessary to effect the purpose of this chapter.

(2) The commission shall:

(a) acquire or develop educational programs for transmission by standard broadcast or closed circuit transmission facilities or other electronic means;

(b) develop programming policies for its operation and establish mechanisms for consultation with broadly representative interests throughout the state;

(c) apply for, receive and hold such authorizations, licenses, and assignments of channels from the federal communications commission or other governmental agencies as may be necessary for transmission of programming by electronic means, and to prepare, file and prosecute before the federal communications commission or other agencies all applications, reports, requests or other documents as may be necessary;

(d) have sole authority over the acquisition, use, operation and maintenance of its equipment and facilities, any provisions of section 82-3325 notwithstanding; however, the commission shall ensure compatibility between its equipment and the statewide communications system;

(e) adopt rules for the conduct of its affairs.

(3) In the establishment of the educational television system, the commission shall give special consideration to sparsely populated rural areas not presently served by an educational television system.

Section 5. There is a new section to be numbered 75-9004, R.C.M. 1947, which reads as follows:

**75-9004. Noncommercial and nonpolitical programming.** All programs shall be noncommercial. No programming shall advance or oppose any candidacy for public office, an elected official, a political party or any legislation to be considered or under consideration. Nothing in this section shall restrict the obligation of the commission under the Communications Act of 1934, 47 U.S.C. Sec. 151 et seq., to operate in the public interest and to afford reasonable opportunity for discussion of conflicting views of issues of public importance.

Section 6. Section 82-3325, R.C.M. 1947, is amended to read as follows:

**"82-3325. Powers and duties of division of communications.** The division of communications is hereby authorized and directed:

(1) To provide communication services to all agencies of state government. The state communications system shall be capable of passing voice, video, data, written information and other forms of communication to and from distant points. The division of communications shall prescribe adequate rules and regulations for the use of any communications equipment and facilities now in use or hereafter made available.

(2) To exercise general supervision over all existing communications systems for all agencies of state government.

(3) To plan, review and approve any additional installations of communications equipment and systems for all agencies of state government. In approving the installation of additional communications equipment or systems, the division shall first consult with and consider the recommendations and advice of the executive heads of the various state agencies.

(4) To approve standards and procedures for selection, acquisition and operation of communication equipment.

(5) To insure that all communications equipment is properly main-

tained. The division is authorized to contract the equipment maintenance if it is in the state's best interest. The division shall maintain cost records and bill agencies for services rendered.

(6) To provide assistance to the legislature, governor and state agencies relative to state and interstate communication matters.

(7) To provide a means whereby political subdivisions of the state may utilize the state communications system, upon such terms and under such conditions as the division may establish.

(8) To accept federal funds granted by Congress or by executive order for all or any purposes of this act, as well as gifts and donations from individuals and private organizations or foundations.

(9) *To assist in providing interconnecting telecommunications relays among facilities of the educational broadcasting commission."*

Section 7. Sections 75-5710 and 75-5711, R.C.M. 1947, are repealed.

Section 8. This act is effective upon its passage and approval.

Approved March 14, 1974

## CHAPTER NO. 216

### AN ACT TO ALLOCATE STATE CONSTRUCTION FUNDS TO MATCH FEDERAL-AID HIGHWAY FUNDS AVAILABLE FOR SAFETY CONSTRUCTION PROGRAMS.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is a new section to be numbered 32-2613, R.C.M. 1947, which reads as follows:

32-2613. **Allocation for safety construction programs.** Annually beginning July 1, 1974, and at the beginning of each fiscal year thereafter, the department of highways shall allocate available state construction funds to match federal-aid highway funds made available by the Federal-Aid Highway Act of 1973 for the following safety construction programs: rail-highway crossings, high hazard locations, elimination of roadside obstacles, safer roads demonstration and pavement marking demonstration. Such allocation shall be made from available state construction moneys before the apportionments provided for in sections 32-2606, 32-2607 and 32-2611, R.C.M. 1947.

Approved March 14, 1974.

## CHAPTER NO. 217

### AN ACT SUPPLEMENTING THE CORRUPT PRACTICES ACT, TITLE

23, CHAPTER 47, R.C.M. 1947, BY PROVIDING THAT A POLITICAL COMMITTEE MUST FILE AN ORGANIZATIONAL STATEMENT WITH THE SECRETARY OF STATE, COUNTY CLERK OR CITY CLERK BEFORE IT MAY EXPEND OR CONTRACT TO EXPEND ANY FUNDS; AND PROVIDING A PENALTY.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is a new section to be numbered 23-4728.1, R.C.M. 1947, which reads as follows:

23-4728.1. No political committee, as defined in section 23-4729, may expend or contract to expend any funds until fifteen (15) days after one of its officers executes and files or causes to be filed an organizational statement, properly acknowledged by a notary public, setting forth the names and addresses of all the officers of the political committee:

(1) with the secretary of state in case of a measure submitted to the voters of the state or involving state or district offices for districts composed of one (1) or more counties or involving the election of a candidate to the legislature;

(2) with the county clerk in case of measures involving counties or subdivisions thereof or county offices or offices of subdivisions thereof; and

(3) with the city clerk in case of measures involving municipalities or offices of municipalities.

(4) Whoever violates any provision of this section shall on conviction thereof be punished by imprisonment in the county jail for not more than six (6) months, or by a fine of not more than five hundred dollars (\$500), or by both such fine and imprisonment.

Approved March 15, 1974

## CHAPTER NO. 218

### AN ACT FOR THE REVISION OF THE LAWS RELATING TO THE DEPARTMENT OF AGRICULTURE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is a new section to be numbered 3-106.1, R.C.M. 1947, which reads as follows:

3-106.1. **Definition.** Unless the context requires otherwise, in Title 3, "department" means the department of agriculture provided for in article XII, section 1 of the Montana Constitution and in Title 82A, chapter 3.

Section 2. Section 3-107, R.C.M. 1947, is amended to read as follows:

"3-107. **Duties of department.** The department shall:

(1) *Encourage* and promote the interests of agriculture, including horticulture and apiculture, and all other allied industries;

(2) *Collect* and publish statistics relating to the production and marketing of crops and other agricultural products so far as *the* information may be of value to the agricultural and allied interests of the state;

(3) *Assist*, encourage, and promote the organization of farmers' institutes, horticultural and agricultural societies, the holding of fairs, live-stock shows, or other exhibits of the products of agriculture;

(4) *Adopt* standards for open and closed receptacles for farm products and standards for the grade and other classification of farm products;

(5) *Cooperate* with producers and consumers in devising and maintaining economical and efficient systems of distribution, and aid in the reduction of waste and expense incidental to marketing;

(6) *Have the* authority to maintain a market news service, including information as to crops, freight rates, commission rates, and other matters as may be of service to producers and consumers, *and act* as a clearing-house for information *of value to producers and consumers*;

(7) *Gather* and diffuse information concerning the supply, demand, prevailing prices, and commercial movement of farm products;

(8) *Investigate* the practices and methods of factors, commission merchants, and others who receive, solicit, buy, sell, handle on commission or otherwise, or deal in grain, vegetables, or other farm products, so that distribution of *the* commodities *is accomplished* efficiently, economically, *and* without hardship, waste or fraud;

(9) *Cooperate* with *Montana state university*, the agricultural experiment station and the federal government for the betterment of the agricultural industries of the state, the improvement of *rural* life, and *promotion of* equality of opportunity for the farmers of the state;

(10) *Take* and hold in the name of the state of Montana property, real and personal, acquired by gifts, subscriptions, donations, and bequests;

(11) *Sell* and dispose of personal property owned by it in *a* manner the *department* may provide, when in the judgment of the department *the* sale or disposal best promotes the purposes for which the department is established;

(12) *Contract* in respect to any matter within the scope of its authority;

(13) *Enforce this title and all other laws for the protection and regulation of agriculture.*"

Section 3. Section 3-113, R.C.M. 1947, is renumbered section 3-24-138, and is amended to read as follows:

**"3-24-138. Deceit in grade, measure or test of milk and cream unlawful.** A person, firm, or corporation selling or delivering milk or cream, or receiving or purchasing milk or cream by weight, grade or Babcock test, or either, or by measure, grade or Babcock test, or either, *may not* with intent to deceive or defraud as to the weight, grade, measure

or Babcock test thereof, manipulate, change or alter *the* measure, Babcock test, grade or weight, or make or return to a person *a* false or inaccurate statement of *the* weight, grade, Babcock test or measure, or use *a* measure or grading or testing apparatus which does not comply with the standards of the department or which has been condemned as inaccurate."

Section 4. Section 3-114, R.C.M. 1947, is renumbered section 3-24-139, and is amended to read as follows:

**"3-24-139. Penalty for violations — revocation of license.** A person, firm, or corporation who violates section 3-24-138 is guilty of a misdemeanor and shall be *fin*ed not more than three hundred dollars (\$300) or *imprisoned* in the county jail for not more than two (2) months, or both *fin*ed and *imprisoned*. The *department* may revoke a license issued to a person, firm, or corporation upon conviction for violation of section 3-24-138."

Section 5. Section 3-116, R.C.M. 1947, is renumbered section 3-3001, and is amended to read as follows:

**"3-3001. Intent of legislature.** It is the intent of the legislature *that the department of agriculture* co-ordinate marketing from the initial producer to the consumer *and* reduce marketing cost by *assisting* both producer and industry to find ways to more efficiently market their products. The *department* shall also endeavor to develop new and improved systems of marketing which will result in the stabilization and improvement of returns for industry and the producer. *It shall* work with farm leaders, farmer co-operatives, processors, wholesalers, retailers, representatives of the transportation industry, consumer groups, and others as a means of correcting marketing inefficiencies or eliminating restrictions."

Section 6. Section 3-117, R.C.M. 1947, is renumbered section 3-3002, and is amended to read as follows:

**"3-3002. Definitions.** As used in this *chapter* unless the context *requires* otherwise:

(1) "Marketing" means *all* activities involved in getting agricultural products from the producer to the consumer and includes transportation, processing, and distribution.

(2) "Agricultural products" means crops, livestock, and livestock products."

Section 7. Section 3-119, R.C.M. 1947, is renumbered section 3-3003, and is amended to read as follows:

**"3-3003. Department's marketing duties.** *The department shall:*

(1) *Keep* abreast of research results in the subject matter area of marketing;

(2) *Coordinate* work with local, state, and national planning groups and other interested parties in helping them identify major problem areas and needs in marketing;

(3) *Develop* and carry out appropriate action programs that will result

in significant improvements being made by those people concerned with problems of marketing;

(4) *Coordinate* efforts with representatives of other agencies or organizations or persons who are concerned with related programs;

(5) *Investigate* the costs of marketing;

(6) *Gather* and disseminate information concerning supply, demand, favorable marketing information, prevailing prices, and changes in marketing movements, practices, and rates, including common and cold storage of food products;

(7) *Promote*, assist, and encourage the organization and operation of co-operative and other associations and organizations for improving the relations and services among producers, distributors, and consumers of food products;

(8) *Investigate* the practice and methods concerning the marketing of agricultural products;

(9) *Act* as mediator or arbitrator, when invited, in a controversy or issue that may arise between producers and distributors;

(10) *Assist* producers and distributors in the economical and efficient distribution of agricultural products at fair prices;

(11) Appear and be heard at any hearing involving agricultural marketing affecting Montana."

Section 8. Section 3-123, R.C.M. 1947, is renumbered section 3-3004, and is amended to read as follows:

**"3-3004. State agencies participating in marketing to co-operate.** All agencies of the state *which* participate in marketing shall co-operate *with* and assist the *department*."

Section 9. Section 3-205, R.C.M. 1947, is amended to read as follows:

**"3-205. Inspectors of grain—samplers and weighers—qualifications—interest.** The *department* shall *provide* inspectors, samplers, and weighers to enforce this act. At all inspection points designated by the *department*, the *department* shall provide sufficient inspectors and weighers to inspect and weigh all grain subject to state inspection, under the supervision of the *department*. *However* grain held in transit for inspection and diversion only, need not be weighed. *Inspectors* shall be able to qualify under the terms and in accordance with the United States Federal Grain Standards Act. *Inspectors, samplers, and weighers may not* be interested directly or indirectly in the handling, sorting, shipping, purchasing, or selling of grain or grain products."

Section 10. Section 3-207, R.C.M. 1947, is amended to read as follows:

**"3-207. Designation of inspection points — inspectors.** *Cities* and towns where grain is received in carload lots may be designated by the *department* as inspection points, and be provided with state inspection and weighing. *Expenditures* for the inspection and weighing at the points



designated by the *department* may not exceed the receipts of fees at *those* points. The *department* may also assign inspectors to portions of the state it *considers* necessary. *Inspectors shall inspect grain delivered in less than carload lots in the portions of the state to which they are assigned, shall furnish producers with an inspection which will enable them to determine the grade of their grain, and shall perform other duties the department prescribes.*"

Section 11. Section 3-208, R.C.M. 1947, is amended to read as follows:

"3-208. **Charges of public warehousemen.** (1) *Public warehousemen subject to this chapter, for the handling or storage of grain, shall charge:*

(a) *Not more than four cents (4¢) per bushel for receiving, elevating, weighing, and immediate delivery on car of the identical grain without mixing. Immediate delivery means that the total period of assemblage and delivery does not exceed seventy-two (72) hours.*

(b) *Four cents (4¢) per bushel, for all grains except flax, for receiving, grading, weighing, elevating, insuring, storing without charge for not more than fifteen (15) days, and delivering to the owner. For flax this charge shall be five cents (5¢) per bushel.*

(c) *Not more than five cents (5¢) per bushel for cleaning grain at the request of the owner where there are cleaning facilities, in which case screenings shall be delivered to the owner.*

(d) *One-thirtieth (1/30) of one cent (.01) per bushel for each day in storage after period of free storage has elapsed.*

(2) *A twenty-five per cent (25%) reduction for the charges shall be allowed when the market price of wheat sold at point of origin is at time of sale less than fifty cents (50¢) per bushel.*

(3) *The schedule of charges for cleaning shall be posted in a conspicuous place where grain is unloaded for cleaning.*

(4) *Failure on the part of a public warehouseman to comply with this chapter renders the licenses of the warehouseman subject to revocation by the department."*

Section 12. Section 3-209, R.C.M. 1947, is amended to read as follows:

"3-209. **Establishment of standard grain grades — procedure.** (1) *The department shall establish standard grades to apply to all grain bought or handled by public warehouses in this state. The department shall adopt as state grade standards all grades for grain established by the United States department of agriculture. Standards for grain shall be established by the department after notice and a public hearing. Notice shall be published in three (3) newspapers of the state at least twenty (20) days before the hearing.*

(2) *Grade standards, or any alteration or modification of those standards which the department may establish, are not effective within thirty (30) days after publication, except for grades established by the United States department of agriculture, which are effective ten (10) days after publication.*

(3) *The grain standards adopted by the department do not apply to grain contracted for before their effective date.*

(4) *The fees and mileage for witnesses shall be paid out of moneys deposited under section 3-233."*

Section 13. Section 3-210, R.C.M. 1947, is amended to read as follows:

**"3-210. Rules governing dockage — sample inspection.** The department shall, after the hearing provided in section 3-209, adopt rules governing the dockage which shall be made on inferior grades and in all executory contracts entered into after the hearing. The rules may not conflict with the terms of the United States Federal Grain Standard Act. Where the price or amount to be paid depends upon terminal weight or grade, the rules shall control the dockage in so far as it affects the price to be paid, and the rules become part of the contract of sale. The department shall also provide for sample inspection of grain, adopt rules governing sample inspections, and provide that the sample inspection when made is final."

Section 14. Section 3-211, R.C.M. 1947, is amended to read as follows:

**"3-211. Appointment of inspectors.** The department shall, during the grain-marketing season, appoint inspectors to visit the grain-growing districts for the purpose of investigating grain grading, dockage, and weighing, and enforcing the rules of the department."

Section 15. Section 3-212, R.C.M. 1947, is amended to read as follows:

**"3-212. Copies of grades and rules to be furnished warehousemen — display of them.** (1) *The department shall, immediately after the establishment of grades and the adoption of rules fixing dockage, supply all public warehousemen with a copy of the grades and rules. A public warehouseman shall keep a copy on file in a convenient place in every warehouse. If an office is maintained in connection with the warehouse, a copy of the grades and rules shall be kept on file in the office. A placard notice shall be posted in a conspicuous place in every warehouse and office, reading: "A copy of Montana grades and rules is on file here for information of interested parties."*

(2) *A warehouseman shall exhibit a copy of the grades and rules to any interested party at any warehouse or office, and permit the interested party to examine the copy."*

Section 16. Section 3-213, R.C.M. 1947, is amended to read as follows:

**"3-213. Fees for inspection, testing, and weighing grain.** The department shall fix the fees for inspection, testing, and weighing of grain. Those fees are a lien upon the grain until paid."

Section 17. Section 3-215, R.C.M. 1947, is amended to read as follows:

**"3-215. Removal of inspectors, samplers, or weighers for misconduct.** Upon written complaint filed with the department, charging an inspector, sampler, or weigher with official misconduct, inefficiency, incompetency, or neglect of duty, the department shall investigate the charges. If the charges are substantiated, the department shall remove that officer."

Section 18. Section 3-216, R.C.M. 1947, is amended to read as follows:

**"3-216. Appeals to department — hearing and order.** (1) *If an owner, consignee, or shipper of grain, or a warehouseman, disagrees with the grade given by the department, he may appeal to the department from the decision within ten (10) days from the date of certificate, by giving notice of appeal and paying a fee fixed by the department. The fee shall be refunded if the decision appealed from is sustained. The notice of appeal may be given by letter stating that the party appeals from the decision of the inspector and specifying the initials and numbers of the cars in which the grain was contained when inspected and graded.*

(2) *The appellant shall also file with the department a list containing the names and addresses of all parties interested in the subject matter. The department, upon receiving the notice and list of interested parties, shall immediately notify the parties interested of the time and place designated by it for a hearing. At the hearing, which shall be five (5) days from the date of receiving the notice, the department shall inquire into the reasonableness and correctness of the original grading. After the hearing, the department shall affirm or modify the grade as justified by the facts and evidence."*

Section 19. Section 3-217, R.C.M. 1947, is amended to read as follows:

**"3-217. Discrimination in charges by warehousemen prohibited.** A public warehouseman subject to this chapter may not directly or indirectly, by any special charge, rebate, drawback, or other device, demand, collect, or receive from any person a greater or lesser compensation for any service rendered in the handling or storage of grain, than he demands, collects, or receives from any other person for a similar and contemporaneous service, under substantially similar circumstances or conditions. A public warehouseman may not make or give any undue or unreasonable preference or advantage to any person, company, or corporation or subject any person, company, or corporation to any undue or unreasonable prejudice or disadvantage. A warehouseman who violates this section is guilty of a misdemeanor."

Section 20. Section 3-218, R.C.M. 1947, is amended to read as follows:

**"3-218. Duty of warehousemen to receive grain — warehouse receipt.** A public warehouseman shall receive for storage and shipment without discrimination of any kind, so far as the capacity of his warehouse will permit, all grain tendered him in the usual course of business in suitable conditions for storage. A warehouse receipt, in form prescribed by law and the rules of the department, shall be issued and delivered to the owner, or his representative, immediately upon receipt of the load or parcel of grain."

Section 21. Section 3-221, R.C.M. 1947, is amended to read as follows:

**"3-221. Kind and quality of grain to be delivered on return of receipt.** Upon the return of the receipt to the proper warehouseman, properly endorsed, and upon payment or tender of all advances and legal charges, grain of the grade agreed upon and of equal quality or value and quantity equal to that placed by him in storage, shall be delivered to the holder of the receipt. Delivery shall be made within forty-eight (48) hours after the facilities for receiving the grain have been provided. At

the option of the owner *the* warehouseman shall deliver *the* grain at terminal, or if mutually agreed, the equivalent market value *of the grain* on *that* date, less any freight and storage charges to terminal, and *less* other charges *which* may be allowed by the *department*. Owners of warehouse receipts surrendered for shipment shall furnish the warehouseman with written instructions regarding the capacity of cars to be ordered from the transportation company and the manner of loading and billing shipments made in *the* cars. The warehouseman shall load and bill all shipments in accordance with instructions given. *The warehouseman is* liable for the amount of excess freight paid *and* for other damages suffered by the owner of the warehouse receipt, resulting from failure to follow accurately the loading and billing instructions. *The* owner of *the* warehouse receipt shall immediately furnish *the* warehouseman a duplicate copy of the original state weighmaster's certificate of weight of *the* carlot shipment at terminal."

Section 22. Section 3-222, R.C.M. 1947, is amended to read as follows:

**"3-222. Dispute as to grade or dockage — laboratory test to be made.** If a dispute or disagreement arises between the party receiving and the party delivering the grain at any public warehouse in this state as to the proper grade or dockage of grain, in accordance with standards at terminal points, an agreed average sample of at least one quart of *the* grain in dispute may be taken by the parties interested, and forwarded in a *suitable* container marked for identification by the interested parties, mail or express charges prepaid, with the names and addresses of the parties, to the *department*. *The department shall examine the* grain and *determine* what grade *the* sample is entitled to under the inspection rules and which amount of dockage it contains. *The findings of the inspection are* binding upon both parties, subject to appeal, as provided in *section 3-216*. If the grain in question is damp, musty, or otherwise out of condition, this fact, with any other necessary information, must accompany *the* sample."

Section 23. Section 3-227, R.C.M. 1947, is amended to read as follows:

**"3-227. Annual report of warehouseman, track buyer and grain dealer — special reports — penalty for failure to report.** On June 30 of each year every warehouseman, track buyer, and grain dealer shall make a report, under oath, to the *department*, on forms prepared by *it*. *The report shall show* the total weight of each kind of grain received and shipped by *the* warehouseman, track buyer, and licensed grain dealer, the amount of outstanding storage receipts on *that* date, and a statement of the amount of grain on hand to cover *them*. The *department* may also require special reports from a warehouseman, grain dealer, or track buyer at *any time*. The *department* may *inspect* the business of every warehouseman, track buyer, and grain dealer and the *method* of conducting the *business*, whenever *considered* proper. *The books, accounts, records, papers, and proceedings of every* warehouseman, track buyer, and grain dealer *are* at all times during business hours subject to inspection. A person who knowingly *falsifies* any of its reports to the *department*, who *fails* to make *the* reports when requested by the *department*, or who *refuses or resists* inspection is guilty of a misdemeanor and *shall be fined*

of not less than three hundred dollars (\$300) nor more than five hundred dollars (\$500)."

Section 24. Section 3-229, R.C.M. 1947, is amended to read as follows:

**"3-229. Protection of holders of warehouse receipts by intervention of department of agriculture — authority of department — action on bond — attorney general and county attorneys to assist.** *When a warehouseman, grain dealer, track buyer, broker, agent, or commission man cannot, or where there is a probability that he will not, meet in full all storage obligations or other obligations resulting from the delivery of grain, the department shall intervene in the interests of the holders of warehouse receipts or other evidences of delivery of grain for which payment has not been made. The department may protect the interests of the holders of warehouse receipts or other evidences of the delivery of grain for which payment has not been made. When examination by the department discloses that it is impossible for a warehouseman, grain dealer, track buyer, broker, agent, or commission man to settle in full for all outstanding warehouse receipts or other evidences of delivery of grain for which payment has not been made, without recourse to the bond filed by the warehouseman, grain dealer, track buyer, broker, agent, or commission man, the department for the benefit of holders of unpaid warehouse receipts or other evidences of delivery for which payment has not been made, shall demand payment of its undertaking by the surety on the bond in an amount necessary for full settlement of warehouse receipts or other evidences of delivery for which payment has not been made. The attorney general or any county attorney of this state shall represent the department in a necessary action against a bond when facts constituting grounds for action are presented to him by the department.*"

Section 25. Section 3-230, R.C.M. 1947, is amended to read as follows:

**"3-230. Special inspection of grain.** *(1) If grain is sold for delivery on Montana grade to be shipped from places not provided with state inspection under this chapter, the buyer, seller, or person making the delivery may have it inspected by notifying an inspector who shall have the grain inspected, and after inspection issue on request of the buyer, seller, or person delivering it an inspector's certificate showing the grade of the grain. The person or persons calling for the inspection shall pay a reasonable fee fixed by the department.*

*(2) Grain that is shipped to points in this state where no inspection is maintained may be inspected on request of either the buyer or seller, and a certificate may be issued showing the grade of the grain. The charge for the service shall at least equal the entire cost of it, and shall be paid by the party calling for the inspection."*

Section 26. Section 3-231, R.C.M. 1947, is amended to read as follows:

**"3-231. Sampling grain.** *Samples may be drawn from all grain shipped to terminal warehouses and from all grain inspected or weighed. The samples are the property of the state, subject to disposition by the department, under rules prescribed by the department."*

Section 27. Section 3-232, R.C.M. 1947, is amended to read as follows:

**"3-232. Examination of grain cars at destination — license of grain weighers.** (1) *An inspector, sampler, or weigher, before opening the doors of a car containing grain, upon its arrival at any of the places designated by the department for inspection, shall first ascertain the condition of the car and determine whether any leakages have occurred while the car was in transit, shall determine whether the doors were properly secured and sealed at the point of shipment, and shall make a record of those facts in all cases, giving seal numbers.*

(2) *After examinations have been made, the state officials shall securely close and reseal doors opened by them, using the special seal of the department.*

(3) *A record of all original seals broken by those officials, the date when broken, and the number of the seals shall be made by them. An inspector, weigher, or sampler shall break the seal, weigh, add superintend the loading of all cars of grain subject to inspection. It is unlawful for any other person to break the seal or weigh the cars of grain.*

(4) *The department may require persons, firms, corporations, or warehousemen engaged in weighing grain in this state to obtain a license, and may adopt rules governing the application for and the issuance of the licenses. A fee may not be charged for a license. A person, firm, corporation, or warehouseman who weighs grain without first obtaining a license is guilty of a misdemeanor and shall be fined not less than twenty-five dollars (\$25) nor more than two hundred dollars (\$200)."*

Section 28. There is a new section to be numbered 3-232.1, which reads as follows:

**3-232.1. Protein testing laboratory.** (1) The department shall maintain a protein testing laboratory.

(2) No other laboratory may certify to the grade or protein content of grain unless the laboratory is licensed by the department under rules adopted by the department.

(3) The department shall, by rule, determine the standard of analysis, controlling all other protein testing laboratories in this state.

(4) The department may, by rule, determine the form of protein certificates issued by it.

Section 29. Section 3-233, R.C.M. 1947, is amended to read as follows:

**"3-233. Fees — disposition.** All fees and other charges fixed by the department, including fees for the inspection, grading, weighing, and protein-testing of grain, shall be kept as near the actual cost of the services as possible. All those fees and charges shall be paid to the department and deposited with the state treasurer. The state treasurer shall place all the fees and charges in the earmarked revenue fund. Fees deposited in the earmarked revenue fund may be used to pay claims for expense incurred in inspecting, grading, weighing, and protein-testing of grain, when the claims have been approved as provided by law."

Section 30. Section 3-512, R.C.M. 1947, is renumbered section 3-232.2, and is amended to read as follows:

**"3-232.2. Protein test to be made of all wheat delivered to grain warehousemen — manner of making test — result — fee.** (1) Each public warehouseman shall take a sample from each load of wheat delivered to his warehouse and preserve *the* sample in a *moisture-proof* container with the owner's name *on it*. As hauling is completed by each owner the several samples taken from all the loads of *that* one owner shall be mixed thoroughly, except that high, medium, or low protein wheat from the same owner or wheat of different types, varieties, or grades shall be segregated and separate containers provided for each. A one-pint portion of the composite sample shall be submitted to the *department* and the balance shall be held in the owner's container. *If either the warehouseman or owner is dissatisfied he may appeal to the department.*

(2) In case of an appeal a one-pint portion of the remainder of the owner's sample shall again be submitted to the *department* with a statement of facts of the appeal and a final test in duplicate shall be made by the *department*. The *department's* certificate of the test is final and binding upon both parties in establishing the basis of the price paid by the warehouseman. A fee commensurate with the cost of each protein test shall be made, to be deducted and paid at the time of final settlement. Upon written request of *the* owner, no protein test need be made upon *the* owner's wheat."

Section 31. Section 3-513, R.C.M. 1947, is renumbered section 3-232.3, and is amended to read as follows:

**"3-232.3. Penalty for violation.** A person violating *section 3-232.2* is guilty of a misdemeanor and shall be fined not less than three hundred dollars (\$300) nor more than five hundred dollars (\$500) for each offense."

Section 32. Section 3-702, R.C.M. 1947, is amended to read as follows:

**"3-702. Definitions.** *Unless the context requires otherwise, as used in sections 3-702 through 3-715:*

(1) *"Warehouseman"* or *"person"* means a dealer, shipper (except grower), society, association, organization, corporation, or their agents or representatives.

(2) *"Beans"* means all varieties of the bean family (except green beans) whether grown or purchased for seed, feed, or human consumption.

(3) *"Storage"* or *"warehousing"* means any method by which beans are held for any party, other than direct ownership, by the party storing *the* beans."

Section 33. Section 3-704, R.C.M. 1947, is amended to read as follows:

**"3-704. License required of persons warehousing beans — fee — disposal of moneys — expiration date.** A person in the business of buying and selling at wholesale or warehousing and storing beans, or receiving or soliciting beans for purchase, sale, or storage, within or *outside* this state shall, before engaging in *the* business, *obtain* a license from the *department of agriculture* and pay a license fee to the department of fifteen dollars (\$15). *The license fee* shall be deposited with the *state* treasurer and credited to the general fund. *Licenses* shall be renewed annually and the prescribed fee paid annually. All licenses shall be issued for the fiscal year *ending June 30* or a fraction of *the* fiscal year."

Section 34. Section 3-705, R.C.M. 1947, is amended to read as follows:

**"3-705. Form of application for license — qualifications — appeal on refusal.** The *department* shall prescribe forms for application for licenses and shall require from the applicant *the information it considers necessary*. The applicant must satisfy the *department* as to his qualifications, warehouse and storage facilities, experience, and financial ability to carry on the business of buying, selling, warehousing and storing. *Upon furnishing the evidence, the department shall grant or refuse a license. If a license is refused by the department, appeal may be made in accordance with sections 3-3304 and 3-3308."*

Section 35. Section 3-706, R.C.M. 1947, is amended to read as follows:

**"3-706. Bond of applicant — conditions — fire insurance.** A person applying for a license to engage in *the business of buying, selling, warehousing, or storing beans* in accordance with this act shall, file with the *department* a surety bond of five thousand dollars (\$5,000). *The bond shall be executed by a responsible surety company licensed to do business in this state and shall be approved by the department. The bond shall be conditioned upon the faithful performance of the applicant's obligations as a bean dealer or warehouseman under the laws of this state and of additional obligations assumed by him under contract with the respective depositories of the beans with him. The department may require additional bond under penalty of revoking the license. The bond shall be in a form and shall contain additional conditions as the department may prescribe to carry out the purposes of this act, and the bond may, in the discretion of the department, include any required fire insurance."*

Section 36. Section 3-708, R.C.M. 1947, is amended to read as follows:

**"3-708. Fee for inspecting warehouse.** The *department* shall charge a reasonable fee, *not in excess of ten dollars (\$10) a year*, for every examination or inspection of a warehouse under this act. *The fee shall be paid to the department and deposited as provided in section 3-704."*

Section 37. Section 3-709, R.C.M. 1947, is amended to read as follows:

**"3-709. Records of bean dealer — inspection — receipt.** (1) A dealer in beans shall keep a complete record of all beans handled by him *in a form described in the department.*

(2) The *record* shall be open to the confidential inspection of the *department* at all times. Every warehouseman shall issue a receipt for all beans received for storage on a form approved by the *department."*

Section 38. Section 3-710, R.C.M. 1947, is amended to read as follows:

**"3-710. Rules to be adopted by department.** The *department* shall adopt rules *it considers necessary* for the safe conduct of the business referred to in this act, including a scale of storage charges and storage receipts. *The department may require reports, from any warehouseman or person receiving stored beans, on forms prepared by the department."*

Section 39. Section 3-712, R.C.M. 1947, is amended to read as follows:

**"3-712. Storage constitutes bailment — duty to keep beans in storage.** The storage of beans under this act *constitutes a bailment and*



upon the return of the warehouse receipt properly endorsed, and upon the payment or tender of all advances and legal charges, the holder of the warehouse receipt *is* entitled to, and the warehouseman *shall* deliver, the identical grade and amount of beans placed in storage. A dealer, under this act, shall maintain at all times in original storage beans equal in amount and grade to all storage certificates issued, unless authorized in writing by holders of receipts or by the *department*, to move to other storage. *Failure to maintain the proper amount of beans is a conversion.*"

Section 40. Section 3-713, R.C.M. 1947, is amended to read as follows:

"3-713. **Records of warehousemen — reports.** A person operating under this act shall keep in a place of safety complete records of all beans stored by him, all beans withdrawn from storage, all warehouse receipts issued by him, and all the receipts returned to and canceled by him, and shall *report to the department* as required by *the rules of the department.*"

Section 41. Section 3-714, R.C.M. 1947, is amended to read as follows:

"3-714. **Enforcement — investigations — hearings — orders of department — appeals.** (1) *To enforce* this act, the *department may*, upon its own motion, or *shall* upon verified complaint against any dealer or any person assuming or attempting to act as a dealer make all necessary investigations. *The department shall* at all times have free access to all buildings, yards, warehouses, storage and transportation or other facilities or places in which beans are kept, stored, handled or transported. If the *department*, upon investigation, *believes* that a dealer is not acting in accordance with this act, or *if* a verified complaint *is filed* against a dealer, *the department shall personally serve on the dealer*, or *shall* mail by registered mail, a complaint, or a copy of the verified complaint. *If* the dealer fails to make formal adjustment or settlement of the charges to the satisfaction of the *department*, the *department shall hold* a formal hearing. Notice of the hearing shall be given at least twenty (20) days *before the hearing*. The hearing shall be held in the city or town in which the transaction complained of is alleged to have occurred.

(2) Copies of records, inspection certificates, certified reports, and all papers on file *with the department* are prima facie evidence of the matters contained *in them*.

(3) *After the hearing* the *department* shall dismiss the charges, suspend the license of the dealer for a specified time, revoke the *license*, or make any other appropriate order *considered* just and proper. An order shall specify its effective date and any order other than one suspending or revoking a license automatically *suspends the license* until the order is complied with. An appeal may be made from the decision of the *department under sections 3-3304 and 3-3308.*"

Section 42. Section 3-805, R.C.M. 1947, is amended to read as follows:

"3-805. **Inspection by grain and seed laboratory — reports — enforcement.** (1) The grain and seed laboratory of the agricultural experiment station shall inspect, *analyze*, and test seeds sold, offered, or exposed for sale in *this state* at a time and place and to an extent as *the director of the agricultural experiment station and the department of*

*agriculture determine. The laboratory shall report to the department all violations as they appear. It shall also annually before September 1 make a report to the department of all tests made and the results, which may be published by the department. The laboratory and the department shall have free access at all reasonable hours to all premises or structures to make examination of any seeds or any other premises of a warehouse, elevator, or railway company. Upon tendering payment at the current value, the department may take any sample of seeds.*

*(2) The department shall administer and enforce this act. For that purpose, the department may adopt rules. The department may issue and enforce a written or printed "stop sale" order to the owner or custodian of any lot of agricultural seed which the department finds in violation of this act. The order shall prohibit further sale of the seed until the department has evidence that the law has been complied with. The seed may not be confiscated or destroyed. Upon proper correction, by reprocessing, labeling, or otherwise, and when, in the judgment of the department, the requirements of this act have been met, the stop sale order shall be lifted and the seed may be sold. The department shall adopt all necessary rules relating to the agricultural experiment station's duties under this act."*

Section 43. Section 3-809, R.C.M. 1947, is amended to read as follows:

**"3-809. Certified seeds — advertisement — definition.** A person, firm, association, or corporation who *issues, uses, or circulates* any certificate, advertisement, tag, seal, poster, letterhead, marking, circular, or written or printed representation or description pertaining to seeds or plant parts intended for propagation or sale, or sold or offered for sale, *in which* the words "Montana state certified," "state certified," "Montana certified," or similar words or phrases are used or employed, *is* subject to sections 3-809 through 3-814."

Section 44. Section 3-814, R.C.M. 1947, is amended to read as follows:

**"3-814. Unlawful use of certification — penalty.** A person, firm, association, or corporation *may not* issue, make, use, or circulate any document purporting to be or represented as a seed or plant part certification certificate, *represent seeds or plant parts as certified, or use the terms* "Montana state certified," "state certified," "Montana certified," or similar words or phrases, without the authority and approval of the university. A person, firm, association, or corporation who *violates sections 3-809 through 3-814* is guilty of a misdemeanor and shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) for each offense."

Section 45. Section 3-820, R.C.M. 1947, is renumbered section 3-802.4, and is amended to read as follows:

**"3-802.4. Prohibitions.** A person, firm, corporation, copartnership or association *may not* sell or transport for use in planting in this state any agricultural, vegetable or flower seed that:

- (1) Contains prohibited noxious weed seeds.
- (2) Contains restricted noxious weed seeds in excess of the maximum numbers per pound as follows:

|                   | Species<br>per pound                  | Number allowed<br>per pound |
|-------------------|---------------------------------------|-----------------------------|
| Dodder            | ( <i>Cuscuta</i> spp.)                | 18                          |
| Blue lettuce      | ( <i>Lactuca pulchella</i> )          | 27                          |
| St. Johnswort     | ( <i>Hypericum perforatum</i> )       | 27                          |
| Oxeye daisy       | ( <i>Chrysanthemum leucanthemum</i> ) | 90                          |
| Spotted knapweed  | ( <i>Centaurea maculosa</i> )         | 18                          |
| Hoary alyssum     | ( <i>Berteroa incana</i> )            | 9                           |
| Wild oats         | ( <i>Avena fatua</i> )                | 45                          |
| Buckhorn plantain | ( <i>Plantago lanceolata</i> )        | 90                          |
| Chickweed         | ( <i>Stellaria</i> spp.)              | 9                           |
| Curly dock        | ( <i>Rumex crispus</i> )              | 45                          |

(3) Contains in excess of two per cent (2%) or more of weed seed.

(4) Is offered or exposed for sale more than nine (9) calendar months from the last day of the month in which the germination test was completed. This nine (9) month limitation *does* not apply when seed is packaged in hermetically sealed containers within twelve (12) months after harvest. The container must be conspicuously labeled in not less than eight (8) point type to indicate:

(a) That the container is hermetically sealed.

(b) That the seed has been preconditioned as to moisture content.

(c) That the germination test is valid for a period not to exceed eighteen (18) months from the date of the germination test for seeds offered for sale on a wholesale basis, and for a period not to exceed thirty-six (36) months for seeds offered for sale at retail.

(d) That the germination of vegetable seed at the time of packaging was equal to or above standards prescribed in the Federal Seed Act of August 1963, with subsequent revisions.

(5) Is represented in any manner to be for lawn seeding purposes, unless it contains at least fifty per cent (50%) pure seed of perennial fine-textured species which shall be specified by rules *under* this act. However, grass mixtures which do not contain fifty per cent (50%) pure seed of perennial fine-textured grasses may be sold. When these grass mixtures are contained in packages of twenty-five (25) pounds or less, they shall carry the statements: "Not recommended for a fine-textured perennial turf. Satisfactory for a temporary ground cover or where coarse grass is not objectionable." A definition of fine-textured varieties to be *adopted* in the *rules* is as follows:

(a) Bluegrasses—all varieties except Canada Bluegrass (*Poa compressa*), Annual Bluegrass (*Poa annua*) and Rough Bluegrass (*Poa trivialis*).

(b) Chewings Red Fescue and all improved varieties.

(c) Creeping Red Fescue and all improved varieties.

(d) Bentgrass—all varieties.

(e) Fine-textured Ryegrasses.

(6) The labeling, advertising or other representation subject to this act represents the seed to be certified seed of any class thereof unless:

(a) it has been determined by a seed certifying agency that such seed conformed to standards of purity and identity as to kind, species (and subspecies, if appropriate) or variety; and

(b) that the seed bears an official label issued for such seed by a seed certifying agency certifying that seed is of a specified class and a specified kind, species (and subspecies, if appropriate) or variety.

(7) Is labeled with a variety name for which a U.S. certificate of plant variety protection has been issued or applied for under the provisions of the Plant Variety Protection Act (7 U.S.C. 2321 et. seq.), without the authority of the owner of the variety; or is labeled with a variety name but not certified by an official seed certifying agency when it is a variety for which the certificate or application for "protection" specifies sale only as a class of certified seed; provided, that seed from a certified lot may be labeled as to variety name when used in a mixture by, or with approval of, the owner of the variety."

Section 46. Section 3-821, R.C.M. 1947, is renumbered section 3-802.5, and is amended to read as follows:

**"3-802.5. Department may revise classifications — hearing — order.** *The department may, with the written approval of the director of the agricultural experiment station recorded before or within ten (10) days after a public hearing, revise the groups and classifications of noxious weed seeds provided in this act to prevent or diminish the distribution and occurrence of noxious weed seeds in this state. Notice of the hearing shall be published by the department at least thirty (30) days before the day set for the hearing, in three (3) newspapers of general circulation in the state and shall be mailed to all associations of seed dealers in the state who are organized on a state-wide basis. A revision or modification made as a result of the hearing shall be adopted by a written order of the department, shall be countersigned "approved" by the director of the agricultural experiment station, and shall plainly state the revisions or modifications and any qualifications, exceptions, or conditions pertaining to the revisions or modifications.*"

Section 47. Section 3-1002, R.C.M. 1947, is amended to read as follows:

**"3-1002. Duty of department of agriculture to destroy — proceedings.** *The department of agriculture shall destroy harmful barberry plants found growing anywhere in the state. If the owner of the land on which the plants are found fails to destroy the plants within ten (10) days after receiving a written notice to that effect from the department, the department shall destroy the plants. The department shall then make out a statement in duplicate of the actual cost and expense incurred in destroying the plants. One copy of the statement shall be transmitted to the landowner, and the other shall be filed with the county treasurer where the land is situated. The treasurer shall place the amount indicated in the statement on the tax duplicate against the land. That amount shall be collected in the same manner and at the same time as taxes are collected.*

*When collected, the amount shall be paid by the treasurer to the department, which shall send it to the state treasurer, to be credited to the general fund."*

Section 48. Section 3-1004, R.C.M. 1947, is amended to read as follows:

"3-1004. **Act applicable to mahonia.** *The department may apply this act to species of mahonia, when in its judgment the necessity arises."*

Section 49. Section 3-1103, R.C.M. 1947, is amended to read as follows:

"3-1103. **Destruction of fruit pests — use of crates.** *(1) The department of agriculture may adopt rules to prevent the spread of contagious disease among fruit and fruit trees, to prevent, treat, and destroy fruit pests and diseases of fruit and fruit trees, and to disinfect grafts, scions, and orchard debris, empty fruit boxes, or packages, or other suspected material or transportable articles dangerous to orchards, fruit, and fruit trees. The rules shall be circulated in printed form by the department among fruit growers and fruit dealers of the state, shall be published at least ten (10) days in two (2) newspapers of general circulation in the state, and shall be posted in three (3) conspicuous places in each county in the state, one of which shall be at the county courthouse. No person may use a second time any crate, box, barrel, package, or wrapping which previously contained nursery stock, however, at the written request of a nurseryman, the department may permit boxes or packages which previously contained nursery stock to be thoroughly fumigated in the presence of an inspector, at the expense of the nurseryman. The department shall give a receipt and mark the box or package. Otherwise, the box or package must be destroyed in its entirety, and possession of the crate, box, barrel, package, or wrapping by a person or dealer, other than the consignee, is prima facie evidence of a violation of this act.*

*(2) The department may seize and destroy by burning, without breaking, an infected or unlawfully used crate, box, barrel, package, or wrapping wherever found, and prosecute the violator."*

Section 50. Section 3-1104, R.C.M. 1947, is amended to read as follows:

"3-1104. **Inspectors — appointment and duties.** *The department shall appoint inspectors of fruit pests who shall be selected with reference to their knowledge and practical experience in horticulture. Inspectors shall visit the nurseries, orchards, stores, packing houses, warehouses, and other places where horticultural products and fruits are kept, and shall see that the rules of the department and the laws of the state pertaining to the disinfection of fruits, trees, plants, grafts, orchard debris, and empty fruit boxes and other material are complied with. Inspectors shall have access, at all times, to all orchards or places where horticultural products or supplies are kept or handled. They shall enforce the rules of the department and may order the destruction and disinfection of infected trees, plants, fruits, or horticultural products or supplies."*

Section 51. Section 3-1106, R.C.M. 1947, is amended to read as follows:

**"3-1106. Investigation of source, control, and destruction of insect pests.** The department may investigate the source, control, and destruction of insect pests, fungus and bacterial diseases of orchards, trees, shrubs, plants, or nursery stock in this state."

Section 52. Section 3-1201, R.C.M. 1947, is amended to read as follows:

**"3-1201. Sales of nursery stock — inspection — fee.** (1) *A person who sells or delivers any nursery stock not previously inspected under this chapter shall notify the department of agriculture of the sale or delivery. The department, after receiving the notice, shall inspect the nursery stock as soon as practicable. If the nursery stock is free from diseases and pests, the department shall so certify and shall attach a certificate of inspection to each lot or bill of nursery stock inspected.*

(2) *The department may designate certain places as quarantine stations where all nursery stock brought into the state shall be inspected and disinfected.*

(3) *If any nursery stock is diseased or infested with any of the pests mentioned in section 3-1301, the department shall order its disinfection or destruction together with all boxes, wrapping, or packing. If the department has ordered the destruction of any nursery stock, it shall notify the owner who may appeal to the director of agriculture before the destruction. The director's decision concerning the disposition of the nursery stock is final.*

(4) *The department shall fix by rule, after a hearing, the charges for disinfecting, fumigating, and inspecting nursery stock.*

(5) *Notice of the hearing on the proposed charges shall be published once in three (3) newspapers of general circulation in this state. The charge for inspecting each carload of nursery stock is ten dollars (\$10) or a proportionate sum fixed by the department for less than carload lots.*

(6) *The department shall collect all fees required by this section and may not give a certificate of inspection until the fees are paid."*

Section 53. There is a new section to be numbered 3-1201.1, R.C.M. 1947, which reads as follows:

**3-1201.1. Definitions.** Unless the context requires otherwise, in this chapter:

(1) "Person" means a person, firm, or corporation.

(2) "Seasonal nurseryman" means a person engaged in the business of selling, dealing in, or importing into the state for sale or distribution, any nursery stock which is for sale only during certain growing seasons and whose place of business is open only during certain growing seasons and not continuously throughout the year.

(3) "Nursery stock" means botanically classified hardy perennial or biennial trees; shrubs; vines; plants, either domesticated or wild; cuttings; grafts; scions; buds; bulbs; rhizomes or roots of them; and other plants and plant parts for, or capable of, propagation. The term does not include vegetable, field, or flower seed, or corns and tubers.

Section 54. Section 3-1202, R.C.M. 1947, is amended to read as follows:

"3-1202. **Department rules and orders.** *Every person in charge or control of nursery, orchard, storeroom, packing house, or other place where horticultural products or supplies are handled or kept shall comply with the rules of the department and shall disinfect or destroy diseased or infected nursery stock or other horticultural supplies or products when ordered so to do by the department.*"

Section 55. Section 3-1203, R.C.M. 1947, is amended to read as follows:

"3-1203. **Duty to notify department of infection.** *The owner or manager of an orchard, nursery, storeroom, packing house, or other place where horticultural products or supplies are kept or handled, which becomes diseased or infested with any injurious insect or pest, immediately upon discovery of the existence of the disease or pest, shall notify the department. The owner or manager, at his expense, shall comply with the instructions of the department for the eradication of the disease or pest.*"

Section 56. Section 3-1204, R.C.M. 1947, is amended to read as follows:

"3-1204. **Removal of infected trees — assessment of costs.** *If a person owning any orchard or nursery stock infected or infested with any injurious insect pest or disease and which becomes a menace to the agricultural or fruit industry, or a menace to ornamental trees, shrubs, plants, or vines fails to comply with the instructions of the department for the destruction or control of the injurious insect pest or disease, or the destruction of the infested or infected orchard or nursery stock within the time specified by the department, the department may condemn, remove, or destroy the orchard or nursery stock or treat it with a proper remedy. If an owner fails to pay the cost of the removal, treatment, or destruction within thirty (30) days after notice has been mailed to the owner at his last known post-office address, the cost shall become a lien on the land of the owner and shall be added by the county treasurer to the taxes upon the property and collected as other taxes.*"

Section 57. Section 3-1205, R.C.M. 1947, is amended to read as follows:

"3-1205. **Prohibition against delivery of uninspected nursery stock.** *A person may not receive or deliver any nursery stock unless a certificate issued by the department is attached to the nursery stock.*"

Section 58. Section 3-1206, R.C.M. 1947, is amended to read as follows:

"3-1206. **Notice to department of shipment of nursery stock.** *A person licensed to do business under this chapter shall notify the department of his intention to ship nursery stock not previously inspected in accordance with this chapter to any point in this state. The notice shall contain the name and address of both the consignor and consignee, the list of the goods to be shipped, the freight or express office at which the*

goods are to be delivered, and the name or title of the transportation company from whom the consignee is to receive the goods. *The notice shall be mailed at least five (5) days before the day of shipment.*"

Section 59. Section 3-1207, R.C.M. 1947, is amended to read as follows:

**"3-1207. Prohibition against receiving uninspected nursery stock.** *A person who receives and accepts any nursery stock that has not been inspected by the department shall, before using or disposing of the nursery stock, first notify the department and give it an opportunity to examine and, if necessary, fumigate the nursery stock.*"

Section 60. Section 3-1209, R.C.M. 1947, is amended to read as follows:

**"3-1209. Right to hold produce for inspection.** *No person is liable to any other person for any damage to any nursery stock caused by holding it to await the certificate of the department.*"

Section 61. Section 3-1210, R.C.M. 1947, is amended to read as follows:

**"3-1210. Inspection of Montana nursery stock — certificate.** *(1) Before it is packed for delivery, all nursery stock grown or growing in this state and used for filling orders shall be inspected by the department. The nursery stock shall be disinfected by fumigating or other method, when considered necessary by the department. If the nursery stock is clean and free from insects and fungi pests, the department shall issue a certificate to the nurseryman. The certificate shall entitle the nurseryman to use that stock for filling orders for current delivery. The certificate shall be furnished at a price not exceeding forty cents (\$.40) per hundred.*

*(2) Nurseries shall give the department five (5) days' notice of the time when the stock will be ready for inspection.*"

Section 62. Section 3-1211, R.C.M. 1947, is renumbered section 3-1218, and is amended to read as follows:

**"3-1218. Penalty for violation of chapter.** *A person violating this chapter is guilty of a misdemeanor and shall be fined not less than twenty-five dollars (\$25) nor more than three hundred dollars (\$300).*"

Section 63. Section 3-1212, R.C.M. 1947, is amended to read as follows:

**"3-1212. License required of nurserymen — application and payment of fees.** *(1) A person, before engaging in the business of selling, dealing in, or importing nursery stock into this state for sale or distribution; or acting as agent, salesman, or solicitor for any nurseryman or dealer in nursery stock; or soliciting orders for the purchase of nursery stock must obtain a license from the department. A person may not falsely represent that he is an agent, salesman, solicitor, or representative of any nurseryman or dealer in nursery stock.*

*(2) The department shall provide application forms for prospective licensees. Applications for licenses may be made at any time before engag-*



*ing in business, except seasonal nurserymen must make application at least thirty (30) days in advance of doing business in this state.*

*(3) Licenses shall be in the name of the person licensed, and shall indicate the purpose for which issued and the name and location of the nursery or place of business of the nurseryman or dealer licensed or represented by an agent, salesman, or solicitor. Licenses, except seasonal nurserymen's licenses, shall bear the date of issue and expire July 1 next following the date of issue. Seasonal nurserymen's licenses shall bear the date of issue and expire on the date provided on the license by the department.*

*(4) The license fee is fifteen dollars (\$15) a year for a general nursery, dealing in all kinds of nursery products; ten dollars (\$10) a year for a nursery dealing in small fruits, ornamental shrubs, bulbs, and perennials; five dollars (\$5) a year for a nursery dealing in bulbs and perennials only; and fifteen dollars (\$15) a year for seasonal nurserymen. Agents, salesmen, and solicitors for licensed nurseries shall be granted salesmen's licenses, free of charge, upon the request of the licensee."*

Section 64. Section 3-1213, R.C.M. 1947, is amended to read as follows:

**"3-1213. Renewal of license.** A licensed nurseryman or dealer in nursery stock who *has* complied with this chapter is entitled, upon the expiration of his license, to have the license renewed. *The license shall be renewed upon payment of the proper fee."*

Section 65. Section 3-1214, R.C.M. 1947, is amended to read as follows:

**"3-1214. Grounds for refusal or revocation of license.** *The department may refuse to issue a license or it may revoke a license under this chapter when:*

*(1) The person has been adjudged bankrupt, insolvent, or guilty of fraud or deceit by a court of competent jurisdiction; or*

*(2) A verified complaint is made to the department that a licensee has failed to comply with this chapter or the horticulture laws."*

Section 66. Section 3-1216, R.C.M. 1947, is amended to read as follows:

**"3-1216. Duplicate copies of orders for nursery stock required.** *(1) A nurseryman or dealer in nursery stock, and a salesman, solicitor, and agent shall give to a person ordering nursery stock a duplicate copy of the order which shall show:*

*(a) The name and location of the nursery where the stock was grown.*

*(b) The name of the nurseryman from whom ordered, and the name of the solicitor, salesman, or agent taking the order.*

*(c) The date of the order and when delivery is to be made.*

*(d) The number, name, age, and price of the variety of tree or plant ordered.*

(2) *Upon shipment into this state from any point outside this state of any nursery stock, by a person not licensed to do business in this state, the person receiving the nursery stock shall have it inspected by the department and shall pay an inspector's fee of ten per cent (10%) of the invoice price of the shipment. The minimum fee for the inspection shall be fifty cents (50¢) and the actual and necessary traveling expenses of the inspector. No inspection fees may be collected in excess of the regular inspection fees, where the stock is shipped to a person licensed under this chapter."*

Section 67. Section 3-1301, R.C.M. 1947, is amended to read as follows:

**"3-1301. Importation and sale of infected fruits and vegetables prohibited.** A person *may not* import into this state, sell, barter, or otherwise dispose of, offer for sale, or *possess for sale or barter*, any fruit or vegetable which is or has been infested with San Jose scale, or the larvae of the codling moth, or other insect pest or disease dangerous to agriculture. *The fact that any fruit or vegetable bears the mark of any such insect, or is worm eaten by the larvae of the codling moth, or shows the effect of disease, is conclusive evidence that the fruit or vegetable is infected. Infected fruit or vegetables may be condemned and confiscated by the department of agriculture. Nothing in this section prevents the growers of the infected fruit or vegetable from manufacturing it into a by-product, or selling and shipping it to a by-product factory, after obtaining a written permit from the department."*

Section 68. Section 3-1302, R.C.M. 1947, is amended to read as follows:

**"3-1302. Quarantine of orchards.** (1) *The department may quarantine an orchard or place where fruits are grown or kept, that is infested with an injurious disease or insect pest. The department may adopt rules governing quarantines, and regulating or restricting the use of quarantined fruits upon the premises, or the shipment or disposition of them as necessary to prevent the spreading of disease or diseases or insect pests.*

(2) *A person may not ship or dispose of diseased or infested fruit or fruit products in violation of the order of the department."*

Section 69. Section 3-1303, R.C.M. 1947, is amended to read as follows:

**"3-1303. Expenses of eradicating orchard diseases — collection as tax.** *When, under the direction or rules of the department, any money is spent by it to eradicate any disease or insect pest from an orchard or other place where fruits are grown or kept, the department shall notify the owner of the orchard or premises in writing of the amount spent plus an additional charge of twenty-five per cent (25%) of the amount spent. The notice shall be mailed to the last known address of the owner. If the owner fails to pay the amount spent by the department plus the additional charge of twenty-five per cent (25%), within thirty (30) days of the time the notice is sent, the department shall file a verified statement with the county treasurer where the money was spent. The statement shall set forth the amount spent plus the additional charge of twenty-five per cent (25%),*

together with the correct description of the property on which *the* money was *spent* as it appears on the assessment roll of the county. The county treasurer shall add the amount *contained in the* statement to the taxes upon *the* property and shall collect *them in the manner* provided for collection of state and county *taxes.*"

Section 70. Section 3-1305, R.C.M. 1947, is renumbered section 3-3401, and is amended to read as follows:

**"3-3401. Inspection of apples packed for sale — procedure.** (1) *The department of agriculture shall inspect all apples packed for sale or shipment under this chapter.*

(2) *The department may:*

(a) *Certify to the grade and pack of apples packed for sale or shipped under this chapter and charge the owner, packer, or shipper a fee fixed by the department for these services.*

(b) *Adopt rules regarding inspection and certification of apples under this chapter."*

Section 71. Section 3-1306, R.C.M. 1947, is amended to read as follows:

**"3-1306. Quarantine against insect pests and plant diseases in other states.** *If the governor believes that any pest, gypsy moth, brown-tail moth, Mediterranean fruit-fly, potato wart, potato canker, black scab, potato ellworm, pea-weevil, alfalfa weevil, alfalfa blight, flax canker, or flax-wilt, or other fruit or plant disease or insect pest, dangerous or inimical to the horticultural or the agricultural industry, exists in certain localities in another state, territory, or country, or that conditions exist that render domestic horticultural stock or agricultural crops or plants likely to become diseased, he must by proclamation designate the localities. The governor shall prohibit the importation from those localities of any tubers, plants, nursery stock, fruit, or seeds or agricultural crops, plants, or seeds likely to introduce or spread infection, contagion, or insect pests into the state, except under restrictions he, after consulting with the department and the cooperative extension service, considers proper."*

Section 72. Section 3-1308, R.C.M. 1947, is amended to read as follows:

**"3-1308. Prohibition against receiving products from infected districts.** *After publication of the governor's proclamation, a person may not knowingly receive any tubers, plants, nursery stock, fruit, seeds or agricultural crops, plants or weeds from a prohibited district, and a person may not transport, convey, sell, or use them in this state. A person who violates this section is subject to the penalty provided in section 3-1309 and is liable for the damages caused to a person by the importation or transportation."*

Section 73. There is a new section to be numbered 3-1309, R.C.M. 1947, which reads as follows:

**3-1309. Penalty.** A person who violates this chapter is guilty of a misdemeanor and shall be fined not less than twenty-five dollars (\$25) nor more than three hundred dollars (\$300).

Section 74. Section 3-1402, R.C.M. 1947, is amended to read as follows:

**"3-1402. Definitions.** *Unless the context requires otherwise* in this act:

(1) "Montana farm products" *means* all products of the farm grown commercially in Montana or *elsewhere and* intended for table use such as potatoes, cherries, and dry beans.

(2) "Other farm products" *means* all farm products which are not normally grown commercially in Montana such as grapefruit and oranges.

(3) "Container" or "package" *means* cloth or fibre sacks, barrel, box, crate, carton, hamper, or baskets, customarily used for the shipment of Montana farm products and other farm products.

(4) "Person" as used herein shall mean any grower, dealer, shipper, society, association, organization, corporation or their agents or representatives.

(5) *The terms defined in subsections (1) and (2) do not include livestock and its by-products, poultry and its products, apiary products, dairy products, grain, or apples."*

Section 75. Section 3-1403, R.C.M. 1947, is amended to read as follows:

**"3-1403. Department to establish standard grades — notice required.** (1) *The department of agriculture shall establish United States standard grades on potatoes, dry beans, cherries and shall, as soon as any Montana farm product or other farm product reaches a volume rendering it of market importance, establish United States grades on that product.*

(2) *The grades become effective thirty (30) days after publication in the Montana administrative register. The department shall publish notice of the establishment of the standards two (2) times in at least three (3) papers of general circulation within the state."*

Section 76. Section 3-1404, R.C.M. 1947, is amended to read as follows:

**"3-1404. Grading and branding of products required — labeling of culls.** *A person may not pack for sale, expose for sale, or sell, transport, deliver, or consign, or possess for sale, transport, delivery, or consignment in interstate or intrastate commerce:*

(1) *Montana farm products and other farm products prepared for market which are not graded and branded to meet the requirement of the grade declared. The grade declared shall conform to the provisions of this act.*

(2) *Other farm products, which includes products arriving or found in Montana in containers not graded and branded, must meet the requirements of United States No. 1 grade or better. Those products which do not grade United States No. 1 or better must be labeled or tagged with proper grade according to Montana inspection.*

(3) *Montana farm products and other farm products not conforming*

to established grades may be sold if labeled, tagged, or branded in the same manner as graded products, except that in place of specifying the grade, the word "culls" or "unclassified" shall be used.

(4) All products branded "unclassified" must contain at least fifty per cent (50%) of products which would grade United States No. 2, or better.

(5) Montana farm products and other farm products for seed purposes may be sold when graded under rules approved by the *department* of agriculture and plainly labeled, tagged, or branded "For Seed Purposes."

(6) Provided further that United States commercial grade *is* a standard grade in *this* state.

(7) *Oranges* labeled "choice" shall meet the requirements of the United States No. 2 grade or better for oranges."

Section 77. Section 3-1407, R.C.M. 1947, is amended to read as follows:

"3-1407. **Entry and inspection by department.** The *department* may enter upon premises where Montana farm products and other farm products are graded, packed, or stored, to inspect *them* as to grade, pack, and condition."

Section 78. Section 3-1408, R.C.M. 1947, is amended to read as follows:

"3-1408. **Rules for enforcement.** The *department* may adopt rules necessary for the enforcement of this act."

Section 79. Section 3-1410, R.C.M. 1947, is amended to read as follows:

"3-1410. **Violation of provisions — penalty.** A *person who* violates this act by not grading Montana farm products and other farm products, or by not tagging or branding containers, or by removing or altering any tag or brands placed upon or attached to any containers, unless ordered to do so by the *department*, is guilty of a misdemeanor. *He* shall be *fin*ed not less than ten dollars (\$10) nor more than one hundred dollars (\$100), or *imprisoned* in the county jail not less than thirty (30) days nor more than three (3) months, or both *fin*ed and *imprisoned*."

Section 80. Section 3-1510, R.C.M. 1947, is renumbered section 90-701, and is amended to read as follows:

"90-701. **Intrastate transactions with paints, etc. — label — contents of label.** A person, firm, or corporation, who manufactures for sale, sells, offers for sale, or ships in intrastate transactions within the state, any paint, mixed paint, paste paint, or compound intended for use as paint, or any varnish, decorative protective coatings, or additives for wood, metal, concrete, or roof coatings, but excluding artists' colors, waxes, and polishes, shall label *it* in a clear and distinct manner. The label shall recite a full analysis of the content with a specification of pigment and vehicle, *including the* analysis by percentage of the pigment content and the analysis by percentage of the vehicle content. The label shall further recite the name and address of the manufacturer or distributor of the product.

The analysis and composition *may be inspected* by the chief chemist of a laboratory designated by the department of *business regulation*."

Section 81. Section 3-1511, R.C.M. 1947, is renumbered section 90-706, and is amended to read as follows:

**"90-706. Penalty for violations.** A person, firm, or corporation who *violates this chapter* shall be *prosecuted and fined* not less than twenty-five dollars (\$25) *nor* more than one hundred dollars (\$100) and all costs, including cost of analysis to the amount of twenty-five dollars (\$25) or *shall be imprisoned in the county jail for not more than sixty (60) days.*"

Section 82. Section 3-1512, R.C.M. 1947, is renumbered section 90-705, and is amended to read as follows:

**"90-705. Possession as prima facie evidence.** The possession, either constructive or actual, by a person, firm, or corporation dealing in the articles or substances described in *section 90-701* and not properly labeled as provided by *section 90-701*, is prima facie evidence that *those articles or substances are kept for sale in violation of this chapter.*"

Section 83. Section 3-1513, R.C.M. 1947, is renumbered section 90-702, and is amended to read as follows:

**"90-702. Enforcement of chapter.** The department of *business regulation* shall *enforce this chapter*. *The department shall have access to all places of business, factories, stores, and buildings used for the manufacture or sale of paints or other products described in section 90-701. The department may purchase and open any package, can, jar, tub, or other receptacle containing any of the articles described in section 90-701 and found during an inspection.*"

Section 84. Section 3-1514, R.C.M. 1947, is renumbered section 90-703, and is amended to read as follows:

**"90-703. Designation of laboratory for analysis — report of analysis.** The department of *business regulation* shall designate the laboratory where analysis of the products *described in section 90-701* shall be made. When products are found to be in violation of *this chapter*, the chief chemist of the laboratory designated by the department shall report the facts to the department. A certificate signed by the chief chemist of the laboratory relating to the analysis of any of the products mentioned in *section 90-701* is presumptive evidence of the facts stated in it."

Section 85. Section 3-1515, R.C.M. 1947, is renumbered section 90-704, and is amended to read as follows:

**"90-704. County attorney — duties regarding chapter.** *The county attorney of the county where the violation of this chapter occurred, shall prosecute every person, firm, or corporation violating this chapter when the evidence of the violation has been presented by the chief chemist of the laboratory making the analysis.*"

Section 86. Section 3-1714, R.C.M. 1947, is amended to read as follows:

**"3-1714. Definitions.** *Unless the context requires otherwise, in this chapter:*

(1) "*Fertilizer materials*" means any substance containing nitrogen, phosphorus, potassium, or any recognized plant nutrient element or compound which is used primarily for its plant nutrient content or for compounding mixed fertilizers except unmanipulated animal and vegetable manures.

(2) "*Mixed fertilizers*" means any physical combination or mixture of fertilizer materials designed for use or claimed to have value in promoting plant growth.

(3) "*Commercial fertilizer*" includes mixed fertilizer and fertilizer materials *or either of them*.

(4) "*Bulk fertilizer*" means commercial fertilizer distributed in nonpackaged form.

(5) "*Brand*" means a term, design, or trade-mark used in connection with one or several grades of commercial fertilizer.

(6) "*Grade*" means the percentages of total nitrogen, available phosphorus or phosphoric acid, and soluble potassium or soluble potash stated in whole numbers in the same terms, order, and percentages as in the guaranteed analysis.

(7) "*Official sample*" means any sample of commercial fertilizer taken by the *department of agriculture*.

(8) "*Ton*" means a net weight of two thousand (2,000) pounds avoirdupois.

(9) "*Per cent*" or "*percentage*" means the percentage by weight.

(10) "*Person*" means an individual, partnership, association, firm, or corporation.

(11) "*Distribute*" means to offer for sale, sell, barter, or otherwise supply commercial fertilizers.

(12) "*Distributor*" means any person who distributes.

(13) "*Registrant*" means the person who registers commercial fertilizer.

(14) "*Manipulated manures*" means substances composed primarily of excreta, plant remains, or mixtures of such substances which have been processed in any manner, including the addition of plant nutrients, drying, grinding and other means.

(15) "*Specialty fertilizer*" means a commercial fertilizer distributed primarily for nonfarm use, such as home gardens, lawns, shrubbery, flowers, golf courses, municipal parks, cemeteries, greenhouses, and nurseries, and *includes* commercial fertilizers used for research or experimental purposes.

(16) "*Soil amendment*" means any material not included under commercial fertilizer, or unmanipulated animal and vegetable manures, lime, limestone, marl, unground bone, or those products subject to the Federal Insecticide, Fungicide and Rodenticide Act as amended, which is added to soil or to plants for purposes of influencing the growth, yield, or quality of the crop or soil flora or fauna or other soil characteristics."

Section 87. There is a new section to be numbered 3-1714.1, R.C.M. 1947, which reads as follows:

**3-1714.1. Guaranteed analysis.** (1) Until the department prescribes the alternative form under subsection (2) of this section, "guaranteed analysis" means the minimum percentage of plant nutrients claimed in the following order and form:

(a) Total nitrogen (N).....percent

Available phosphoric acid (P<sub>2</sub>O<sub>5</sub>).....percent

Soluble potash (K<sub>2</sub>O).....percent

(b) For unacidulated mineral phosphatic materials and basic slag, guaranteed analysis includes both total and available phosphoric acid and the degree of fineness.

(c) For bone, tankage, and other organic phosphatic materials, guaranteed analysis includes total phosphoric acid.

(d) Guarantees for plant nutrients other than nitrogen, phosphorus, and potassium may be permitted or required by rules adopted by the department. The guarantees for other nutrients shall be expressed in the form of the element. The sources of other nutrients including, but not limited to, oxides, salt, and chelates, may be required to be stated on the application for registration and may be included as a parenthetical statement on the label. Other beneficial substances or compounds, determinable by laboratory methods, also may be guaranteed by permission of the department. When any plant nutrients or other substances or compounds are guaranteed, they are subject to inspection and analysis in accord with the methods and regulations prescribed by section 3-1718.

(e) Except when prohibited by regulation, potential basicity or acidity expressed in terms of calcium equivalent in multiples of one hundred (100) pounds per ton may be shown.

(2) If the department finds, after public hearing, that the requirement for expressing the guaranteed analysis of phosphorus and potassium in elemental form would not impose an economic hardship on distributors and users of fertilizer by reason of conflicting labeling requirements among the states, it may require by department rule that the guaranteed analysis be in the following form:

Total nitrogen (N).....percent

Available phosphorus (P).....percent

Soluble potassium (K).....percent

(3) The effective date of the rule may not be less than six (6) months following the adoption of the rule. For a period of two (2) years following the effective date of the rule, the equivalent of phosphorus and potassium may also be shown in the form of phosphoric acid and potash. However, after the effective date of a rule requiring that phosphorus and potassium be shown in the elemental form, the guaranteed analysis for nitrogen, phosphorus, and potassium is the grade for those elements.



Section 88. Section 3-1715, R.C.M. 1947, is amended to read as follows:

"3-1715. **Registration and licenses.** (a) Each brand and grade of commercial fertilizer and each *soil amendment* shall be registered before being distributed in this state. The application for registration shall be submitted to the *department* on a form furnished by the *department* and shall be accompanied by a fee of thirty-five dollars (\$35) per brand and ten dollars (\$10) per grade for each fertilizer and for each soil amendment guaranteeing plant nutrients and claiming value as a fertilizer. The registration fee is five dollars (\$5) for each soil amendment making no guarantees for plant nutrients or claims for fertilizer value. Upon approval by the *department*, a copy of the registration shall be furnished to the applicant. All registrations expire on December 31 of each year. The application shall include:

- (1) The brand and grade;
  - (2) The guaranteed analysis;
  - (3) The sources from which the nitrogen, phosphorus and potassium are derived;
  - (4) The *department* may require a manufacturer of commercial fertilizer or soil amendment to furnish additional information if the *application* does not adequately describe the fertility value claimed *and* the composition of the product;
  - (5) The name and address of the registrant.
- (b) A distributor *may* not be required to register any brand or grade of commercial fertilizer which is already registered under this *section* by another person.
- (c) The plant nutrient content of every brand and grade of commercial fertilizer must remain uniform for the period of registration.
- (d) A distributor who blends or mixes fertilizer materials to a customer's order without a guaranteed analysis of the mixture in accordance with *subsection (1)* of this section must first obtain a license from the *department*. The application for the license shall be submitted in duplicate to the *department* on forms furnished by the *department* and shall be accompanied by the fee prescribed in *this section*. If the distributor blends or mixes fertilizer materials at more than one fixed location, or by more than one mobile mechanical unit, a license is required for each location and for each such mobile mechanical unit. The *license fee* is twenty-five dollars (\$25) for each *fixed* location. The *license fee* for mobile units owned and operated by one distributor is twenty-five dollars (\$25) for the first unit and ten dollars (\$10) for each such additional mobile unit. The license expires on December 31 of each year.
- (e) Each licensee shall furnish the *department* with a confidential written statement of the tonnage of each grade of fertilizer material used by him in this state in his blending and mixing operation. The statement shall cover the semiannual periods ending June 30 and December 31 of each year and shall be filed not later than thirty (30) days after the close

of each semiannual period. *The department may extend the filing deadline an additional thirty (30) days for a valid reason submitted in writing. Instead of the guaranteed analysis, the licensee must furnish to every purchaser and consumer in written or printed form an invoice or delivery ticket, showing the net weight and guaranteed analysis of every one of the materials used, which shall accompany delivery.*

(f) The distributor shall at all times produce *a thorough* and uniform mixture of fertilizer materials or soil amendments. When two (2) or more fertilizers are delivered in the same load, they shall be *thoroughly* and uniformly mixed unless they are in separate compartments.

(g) *The department may revoke or refuse to issue the license upon satisfactory evidence that the licensee has used fraudulent and deceptive practices in the evasion or attempted evasion of this section. However, a license may not be revoked or refused until the licensee is given a hearing by the department under section 3-1723.*

(h) *Fees collected under this section shall be deposited in the state treasury for credit to the earmarked revenue fund and shall be used for the expenses of administering sections 3-1712 through 3-1718 and 3-1720 through 3-1728."*

Section 89. Section 3-1717, R.C.M. 1947, is amended to read as follows:

"3-1717. **Inspection fees.** (1) *An inspection fee of fifteen cents (\$.15) per ton shall be paid to the department for all commercial fertilizers sold or distributed in this state. However, sales to manufacturers or exchanges between them are exempted. All fees collected under this section shall be deposited in the state treasury to the credit of the earmarked revenue fund and shall be used for the expenses of administering sections 3-1712 through 3-1718 and 3-1720 through 3-1728. On individual packages of commercial fertilizer containing ten (10) pounds or less, there is no inspection fee. If a person sells commercial fertilizer in packages of ten (10) pounds or less and in packages over ten (10) pounds, the inspection fee applies only to that portion sold in packages of over ten (10) pounds.*

(2) Payment of the inspection fee shall be evidenced by a statement of commercial fertilizer distributed, together with documents showing that fees corresponding to the tonnage were received by the department.

(3) A registrant who distributes commercial fertilizer in this state shall:

(a) File an affidavit semiannually, within thirty (30) days after January 1 and July 1, setting forth the number of net tons of commercial fertilizer distributed in this state during the preceding six (a) months' period. Upon filing the statement, the registrant shall pay the inspection fee at the rate stated in subsection (1) of this section. If the tonnage report is not filed and the payment of the inspection fee is not made within fifteen (15) days after the date due, a collection fee of ten (10) per cent (minimum ten dollars (\$10)) of the amount due shall be assessed against the registrant, and the fees due are a debt and shall be the basis of a judgment against the registrant."

Section 90. Section 3-1718, R.C.M. 1947, is amended to read as follows:

"3-1718. **Inspection, sampling, analysis.** (1) *The department, in cooperation with the agricultural experiment station of Montana state university, shall sample, inspect, analyze, and test commercial fertilizers distributed in this state at a time and place and to an extent necessary to determine whether the commercial fertilizers are in compliance with this chapter. The department may enter upon any public or private premises during regular business hours in order to have access to commercial fertilizers subject to this chapter.*

(2) *The methods of analysis and sampling shall be those adopted by the department from sources such as those of the association of official analytical chemists. The results of analysis, together with additional information the department considers advisable, shall be transmitted promptly to the manufacturer and to the dealer or person in whose possession the product was sampled.*

(3) *The department, in determining whether any commercial fertilizer is deficient in plant food, shall be guided solely by the official sample obtained and analyzed as provided for in paragraphs (1) and (2) of this section.*

(4) *If on the basis of an inspection or the analysis of the official sample a commercial fertilizer is found to be subject to penalty or other legal action, the department shall forward to the registrant notification of the violation at least ten (10) days before its report is made public. If during that period no adequate evidence to the contrary is made available to the department, the report becomes official. Upon request, the department shall furnish to the registrant a portion of any sample found subject to penalty or other legal action."*

Section 91. Section 3-1721, R.C.M. 1947, is amended to read as follows:

"3-1721. **Grade-tonnage reports.** Each person registering commercial fertilizers under this chapter shall furnish the department with a confidential written statement of the tonnage of each grade of commercial fertilizer sold by him in this state. The statement shall include all sales for the periods from January 1 through June 30 and from July 1 through December 31 of each year. The department may, in its discretion, cancel the registration of a person who fails to comply with this section if the above statement is not made within thirty (30) days from the close of each six (6) months' period. The department, in its discretion, may grant a reasonable extension of time. No information furnished under this section may be disclosed in such a way as to divulge the operation of any person. This report may, at the discretion of the registrant, be combined with the report required by section 3-1717 (2)."

Section 92. Section 3-1722, R.C.M. 1947, is amended to read as follows:

"3-1722. **Publications.** The department shall publish at least annually information concerning the sales of commercial fertilizers, together with

data on their production and use as *it considers* advisable, and *shall* report the results of the analysis based on official samples of commercial fertilizers sold *in this state*."

Section 93. Section 3-1723, R.C.M. 1947, is amended to read as follows:

"3-1723. **Rules and hearings.** (1) For the enforcement of this *chapter*, the *department may adopt* and enforce *necessary* rules relating to the distribution of commercial fertilizers.

(2) The *department* shall, before denying the application for a registration or before canceling or revoking any registration, *provide the applicant or distributor* a hearing, and *shall provide* at least ten (10) *days' written notice* to the applicant or distributor. The notice may be served by delivering it personally to the applicant or distributor, or by mailing it by registered mail to the last known business address of the applicant or distributor. The hearing on *the charges* shall be held before the *department* at a time and place the *department prescribes*."

Section 94. Section 3-1724, R.C.M. 1947, is amended to read as follows:

"3-1724. **Cancellation of registration.** The *department may* cancel the registration of any commercial fertilizer or refuse to register any commercial fertilizer upon satisfactory evidence that the registrant has used fraudulent or deceptive practices in the *evasion* or attempted *evasion* of this *chapter* or any rules *adopted under it*. However, no registration *may* be revoked or refused until the registrant *is* given the opportunity to appear for a hearing by the *department*, as provided in section 3-1723."

Section 95. Section 3-1725, R.C.M. 1947, is amended to read as follows:

"3-1725. **"Stop sale" orders.** The *department may* issue and enforce a written or printed "stop sale, use, or removal" order to the owner or custodian of any lot of commercial fertilizer and *may hold the fertilizer* at a designated place when *it finds the fertilizer is* offered for sale in violation of this *chapter*. The *department* shall release the commercial fertilizer when the requirements of this *chapter* have been complied with and all costs and expenses incurred in connection with the withdrawal have been paid."

Section 96. Section 3-1726, R.C.M. 1947, is amended to read as follows:

"3-1726. **Seizure, condemnation, and sale.** Commercial fertilizer not in compliance with the provisions of this *chapter* is subject to seizure on complaint of the *department* to a court of competent jurisdiction in the area in which *the* commercial fertilizer is located. *If* the court finds the commercial fertilizer in violation of this *chapter* and orders the condemnation of *the* commercial fertilizer, it shall be disposed of in any manner consistent with the quality of the commercial fertilizer and the laws of the state. However, *the commercial fertilizer may not be disposed of until the claimant is given* an opportunity to apply to the court for release of *the* commercial fertilizer or for permission to process or relabel *the* commercial fertilizer to bring it into compliance with this *chapter*."

Section 97. Section 3-1727, R.C.M. 1947, is amended to read as follows:

**"3-1727. Violations-enforcement proceedings — judicial review.**

(1) If it *appears* from the examination of any commercial fertilizer that this *chapter* or the rules *adopted under this chapter* have been violated, the *department* shall *give* notice of the violations to the registrant, distributor, or possessor from whom *the* sample was taken. A person notified shall be given *an* opportunity to be heard under rules *of the department*. If it appears after a hearing, either in the presence or absence of the person notified, that this *chapter* or rules issued *under this chapter* have been violated, the *department* may certify the facts to the proper prosecuting attorney.

(2) A person *who violates this chapter* or the rules *adopted under this chapter*, or who obstructs, prevents, or attempts to prevent the *department* from performing its duty *under this chapter*, is guilty of a misdemeanor and shall be fined not less than three hundred dollars (\$300) *nor* more than five hundred dollars (\$500) for the first violation, and not less than three hundred dollars (\$300) *nor* more than one thousand dollars (\$1,000) for a subsequent violation. In all prosecutions under this *chapter* involving the composition of a lot of commercial fertilizer, a certified copy of the official analysis *of the department* is *prima facie* evidence of the composition.

(3) Nothing in this *chapter* requires the *department* to report for prosecution or for the *beginning* of seizure proceedings minor violations of *this chapter* when it believes that the public *interest* will be best served by a suitable notice of warning in writing.

(4) A prosecuting attorney to whom a violation is reported *shall prosecute the violator* in a court of competent jurisdiction without delay.

(5) The *department* may apply for and the court *may* grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this *chapter* or any rule *adopted* under the *chapter* notwithstanding the existence of other remedies at law. The injunction *shall* be issued without bond.

(6) *If a person adversely affected by an act, order, or ruling made by the department under this chapter is not entitled to a hearing before the department to determine his rights, he may within forty-five (45) days, sue in the district court of any county where the alleged violation giving rise to the department's act, order, or ruling occurred, for new trial of the issues bearing upon the act, order, or ruling. After the trial the court may issue and enforce those orders, judgments, or decrees it considers proper, just, and equitable."*

Section 98. Section 3-1730, R.C.M. 1947, is amended to read as follows:

**"3-1730. Allocation of assessments.** The assessment shall be collected by the department and up to one per cent (1%) shall be retained by the department for costs of collection. *The balance shall be deposited in the earmarked revenue fund with fifty per cent (50%) for use by the*

*cooperative extension service and fifty per cent (50%) for use by the agricultural experiment station in programs recommended by the fertilizer advisory committee provided for in section 82A-513 and approved by the respective directors."*

Section 99. Section 3-1732, R.C.M. 1947, is renumbered 82A-513, and is amended to read as follows:

**"82A-513. Advisory committee — appointment — qualifications — term.** (1) *There is a fertilizer advisory committee.*

(2) *The committee consists of five (5) members. The members shall represent the fertilizer users of the state. The members shall be appointed by the dean of agriculture of Montana state university with the approval of the chairman of the Montana house of representatives agriculture and irrigation committee, the chairman of the Montana senate agriculture committee, the chairman of the Montana plant food association or its successor organization, the director of the cooperative extension service, and the director of the Montana agricultural experiment station.*

(3) *The members shall serve staggered five (5) year terms. A member may not serve more than seven (7) consecutive years."*

Section 100. Section 3-1906, R.C.M. 1947, is amended to read as follows:

**"3-1906. Administration.** *The department shall administer and enforce this act. The department may adopt necessary rules to administer and enforce this act. The department shall fix the fees for inspection and weighing of mustard seed and the fees are a lien upon the mustard seed until paid. The fees shall be collected by the department. The department shall deposit the fees with the state treasurer who shall deposit them in the earmarked revenue fund. All operating expenses of this act shall be paid from those fees."*

Section 101. Section 3-1908, R.C.M. 1947, is amended to read as follows:

**"3-1908. License and bond for persons contracting for purchase of mustard seed — when required — deposit of fees — revocation of licenses.** (1) *All persons, firms, copartnerships, corporations and associations engaging in the business of contracting in advance of harvesting for the purchase of mustard seed crops to be paid for on delivery of the crops shall, before March 1 of each year, pay to the state treasurer a license fee of ten dollars (\$10), and shall before March 1 of each year, give a bond with sureties approved by the department, in an amount the department may require but not less than ten thousand dollars (\$10,000). The bond shall be conditioned upon the payment for the contracted seed at the price specified in the contract, and upon the payment of the license fee. Upon the approval of the bond, the department shall issue the license for a period of one (1) year.*

(2) *A person who begins the business described in subsection (1) of this section after March 1 of any year shall pay the license fee and furnish the bond before engaging in the business.*

(3) *A licensee under this section shall, at the request of the department, report the amount of seed contracted.*

(4) *All funds collected from license fees shall be deposited by the department with the state treasurer for credit to the general fund.*

(5) *The department may revoke for cause any license issued under this section."*

Section 102. Section 3-1909, R.C.M. 1947, is amended to read as follows:

"3-1909. **Enforcement.** *The department shall enforce this act, and for that purpose shall adopt necessary and proper rules."*

Section 103. Section 3-2801, R.C.M. 1947, is amended to read as follows:

"3-2801. **Trust assets of rural rehabilitation corporation — department of agriculture designated to make application.** *The department of agriculture is designated as the department of Montana state government to apply to the secretary of agriculture of the United States, or any other proper federal official, under Public Law 499, eighty-first Congress, approved May 3, 1950, for the return of the trust assets, either funds or property, held by the United States as trustee in behalf of the Montana rural rehabilitation corporation."*

Section 104. Section 3-2802, R.C.M. 1947, is amended to read as follows:

"3-2802. **Agreements with United States secretary of agriculture authorized.** *The department shall enter into agreements with the secretary of agriculture of the United States under section 2 (f) of Public Law 499, 81st Congress upon terms and conditions and for periods of time as are mutually agreeable, authorizing the secretary of agriculture of the United States to accept, administer, spend, and use in the state all or any part of the trust assets or any other funds of the state which may be appropriated for carrying out the purposes of Titles I and II of the Bankhead-Jones Farm Tenant Act, in accordance with the applicable provisions of Title IV thereof, as amended; and do all things necessary to carry out the agreements."*

Section 105. Section 3-2803, R.C.M. 1947, is amended to read as follows:

"3-2803. **Administration of trust assets.** *Funds and the proceeds of the trust assets which are not authorized to be administered by the secretary of agriculture of the United States under section 3-2802 shall be received by the department, and paid by it to the state treasurer for deposit in the federal and private grant clearance fund and used for expenditure or obligation by the department for the purpose of section 3-2802, or for the rural rehabilitation purposes permissible under the charter of the now dissolved Montana rural rehabilitation corporation as may be agreed upon between the department and the secretary of agriculture of the United States, subject to Public Law 499."*

Section 106. Section 3-2804, R.C.M. 1947, is amended to read as follows:

**"3-2804. Powers of department — claims and obligations — property acquired at foreclosure.** (1) *The department may:*

(a) Collect, compromise, adjust, or cancel claims and obligations arising out of or administered under this *chapter* or under any mortgage, lease, contract, or agreement entered into or administered *under this chapter* and, if necessary, pursue *them* to final collection in any court having jurisdiction;

(b) Bid for and purchase at any execution, foreclosure, or other sale, or otherwise acquire property upon which the *department* has a lien by reason of a judgment or execution, or which is pledged, mortgaged, or conveyed, or which otherwise secures any loan or other indebtedness owing to or acquired by the *department* under this *chapter*;

(c) Accept title to any property so purchased or acquired; operate or lease *the* property for *a* period necessary to protect the investment; and sell or otherwise dispose of *the* property in a manner consistent with this *chapter*.

(2) The authority *granted to the department in this section* may be delegated to the secretary of agriculture of the United States with respect to funds or assets authorized to be administered and used by him under agreements entered into *under* section 3-2802."

Section 107. Section 3-2805, R.C.M. 1947, is amended to read as follows:

**"3-2805. United States and secretary of agriculture free from liability.** The United States and the secretary of agriculture *are* free from liability by virtue of the transfer of the assets to the *department under this chapter*."

Section 108. Section 3-2902, R.C.M. 1947, is amended to read as follows:

**"3-2902. Declaration of policy.** In the presence of the facts that wheat is the principal grain crop produced in Montana, and as such is an agricultural resource of the first magnitude in the economy of the inhabitants of Montana, a prime factor in the production of wealth and the development and stabilization of property values and of activities and enterprises which are bases and sources of important contributions by taxation to the public revenues, and that Montana wheat is a commodity which enters a world market highly competitive in character, it is hereby declared to be the public policy of the state of Montana to protect and foster the health, prosperity and general welfare of its people by encouraging and promoting intensive, scientific and practical research into all phases of wheat culture and production, marketing and use and into the development of markets for wheat grown in Montana by the department of agriculture."

Section 109. Section 3-2904, R.C.M. 1947, is amended to read as follows:



"3-2904. **Definitions.** As used in this act, unless the context requires otherwise:

(1) "Committee" means the Montana wheat research and marketing committee *provided for in section 82A-304*;

(2) "Grower" means any landowner personally engaged in growing wheat, a tenant of the landowner personally engaged in growing wheat, or both the owner and the tenant jointly; and includes a person, partnership, association, corporation, co-operative, trust, sharecropper, and any and all other business units, devices, and arrangements;

(3) "First purchaser" means any person, public or private corporation, association, or partnership, buying, accepting for shipment, or otherwise acquiring the property in or to wheat from a grower, and shall include a mortgagee, pledgee, lienor, or other person, public or private, having a claim against the grower, where the actual or constructive possession of such wheat is taken as part payment or in satisfaction of such mortgage, pledge, lien, or claim;

(4) "Commercial channels" means the sale of wheat for any use, when sold to any commercial buyer, dealer, processor, co-operative, or to any person, public or private, who resells any wheat or product produced from wheat; and

(5) "Sale" includes any pledge or mortgage of wheat, after harvest, to any person, public or private."

Section 110. Section 3-2906, R.C.M. 1947, is amended to read as follows:

"3-2906. **Compensation — per diem.** Members of the committee shall receive no salary, but shall be paid, from the wheat research and marketing account in the *federal and private revenue* fund, a per diem of twenty dollars (\$20) for each day they are engaged in the transaction of official business, together with their actual and necessary expenses incurred while on official business."

Section 111. Section 3-2909, R.C.M. 1947, is amended to read as follows:

"3-2909. **Powers of the committee.** (1) *The committee may:*

(a) *Adopt rules necessary for the administration of this act;*

(b) *Provide, through the department, for the enforcement of this act;*

(c) *Provide for the conduct of research into the production, marketing, and uses of wheat;*

(d) *Enter into contracts or agreements with Montana State University and other local, state, or national organizations, public or private, for the purposes of improving wheat quality, increasing the efficiency of production, developing marketing knowledge, developing markets, determining new uses for wheat, developing alternative crops for wheat, and carrying out all research and marketing contemplated by this act. The committee may not establish research units or agencies of its own.*

(2) *No researchers or professional or scientific personnel may be employed to carry out this act except as provided in subsection (1)(d) of this section.*

(3) *None of the powers or duties provided for in this act permit participation in state or federal political action by the committee."*

Section 112. Section 3-2913, R.C.M. 1947, is amended to read as follows:

**"3-2913. Buyer's delivery of invoice to grower — form — filing of sworn statement — payment of assessment.** (1) The purchaser of the wheat at the time of sale, or the pledgee, mortgagee, or other lender at the time of the loan or advance, shall *give* separate invoices for each purchase to the grower. The invoices shall be on forms approved by the department and shall show:

- (a) *The name and address of the grower and seller;*
- (b) *The name and address of the purchaser or the lender;*
- (c) *The number of bushels of wheat sold, mortgaged, or pledged;*
- (d) *The date of the purchase, mortgage, or pledge and the amount of assessment collected and remitted to the department.*

(2) The purchaser, mortgagee, or pledgee shall file with the department, on forms prescribed by the department, *within twenty (20) days after the end of a month in which he purchases a grower's wheat or in which a lender makes a loan or advance on a grower's wheat, a sworn statement of the number of bushels of wheat purchased in Montana or the number of bushels mortgaged or pledged, or otherwise transferred or liened as security for a loan, during the preceding calendar month. At the time the sworn statement is filed, the purchaser or lender shall pay to the department the assessment provided for in section 3-2911 for deposit in the wheat research and marketing account in the revolving fund.*

(3) The statement referred to in subsections (1) and (2) of this section shall be legibly written and shall be entirely free of any corrections or erasures. *A person may not alter any part of a statement.*

(4) *After thirty (30) days and before ninety (90) days following the deduction of the assessment by the first purchaser or the first lender, the grower may, upon the submission of a written, verified request to the department, obtain a refund of the assessment. The request shall be accompanied by the original invoices received by the grower at the time of settlement. The department shall keep complete records of all refunds made under the provisions of this section. Records of refunds may be destroyed two (2) years after the refund is made. All original invoices shall be returned to the grower with the refund payment."*

Section 113. Section 3-2915, R.C.M. 1947, is amended to read as follows:

**"3-2915. Receipt of gifts, grants or donations for research purposes.** The department may receive any gifts, grants, or donations for any research of scientific inquiries conducted under this act, *and may spend them in compliance with the conditions of the grants, gifts, and donations."*

Section 114. Section 3-2916, R.C.M. 1947, is amended to read as follows:

**"3-2916. Official bonds of employees.** *Employees of the department participating in the handling of assessment receipts or other receipts shall be bonded for the faithful and safe handling and accounting for the receipts while in their hands and for faithful compliance with this act.*"

Section 115. Section 3-2917, R.C.M. 1947, is amended to read as follows:

**"3-2917. Research and marketing account — sources — use — expenditures.** (1) There shall be an account in the federal and private revenue fund known as the wheat research and marketing account. *The following shall be placed in the account:*

- (a) *The proceeds of all millage levies collected under this chapter, and*
- (b) *The proceeds from all gifts, grants, or donations to the department for research authorized under this chapter.*
- (2) *The account shall be maintained for the purposes of this chapter and shall be separate from all other accounts of the department."*

Section 116. Section 16-1105, R.C.M. 1947, is amended to read as follows:

**"16-1105. Appropriating money for advertising of county products authorized.** The board of county commissioners of any county *may appropriate* money from the general fund of the county for advertising the agricultural resources of the county, through the department of agriculture, or for assisting the department of agriculture in presenting exhibits of Montana products at fairs or expositions outside the state."

Section 117. Section 16-1708, R.C.M. 1947, is amended to read as follows:

**"16-1708. Embargo against introduction of noxious weed seed from other states.** *If the department of agriculture believes that movements of grain, plants, seed, tubers, nursery stock, hay, straw, fruit, or other materials containing noxious weed seed or plants dangerous or inimical to the horticultural or agricultural industries are about to be introduced into the state, it may advise the governor. The governor shall, by proclamation, declare an embargo against the importation or shipment of the grain, plants, tubers, nursery stock, seed, hay, straw, fruit, or other materials into the state, except under restrictions established in this act, and provided in the rules adopted by the department of agriculture."*

Section 118. Section 16-1708.1, R.C.M. 1947, is amended to read as follows:

**"16-1708.1. Rules for enforcement of interstate embargo.** The department of agriculture *shall adopt* all necessary rules in the enforcement of an embargo proclaimed as provided in section 16-1708. The department of agriculture, in adopting the rules, may provide for the establishment of inspection stations, the appointment of inspectors, the establishment of the inspection fees, the issuance of certificates, the

methods of transporting and packaging, and other rules and procedures necessary to carry out this act."

Section 119. Section 16-1708.3, R.C.M. 1947, is amended to read as follows:

"16-1708.3. **Disposition of fines and inspection fees.** All fines levied as provided in section 16-1708.2, and all fees collected from inspections shall be deposited with the state treasurer to the credit of the earmarked revenue fund for the use of the *department* of agriculture for the purpose of administering and enforcing this act."

Section 120. Section 27-216, R.C.M. 1947, is amended to read as follows:

"27-216. **Definitions.** *Unless the context requires otherwise, in this act:*

(1) "Active ingredient" means:

(a) In the case of a pesticide other than a plant regulator, defoliant, or desiccant, an ingredient which will prevent, destroy, repel, alter life processes, or mitigate insects, nematodes, fungi, rodents, weeds, or other pests.

(b) In the case of a plant regulator, an ingredient which acts upon the physiology to accelerate or retard the rate of growth or rate of maturation or otherwise alter the normal processes of ornamental or crop plants or *their* produce.

(c) In the case of a defoliant, an ingredient which will cause the leaves or foliage to drop from a plant.

(d) In the case of a desiccant, an ingredient which will artificially accelerate the drying of plant tissue.

(2) "Adulterated" *applies to a pesticide* if its strength of purity falls below the professed standard or quality as expressed on labeling or under which it is sold, or if any substance has been substituted wholly or in part for the pesticide, or if any valuable constituent of the *pesticide* has been wholly or in part abstracted.

(3) "Antidote" means the most practical immediate treatment in case of poisoning and includes first aid treatment.

(4) "Applicator" means *a person who applies pesticides by any method.*

(5) "Commercial applicator" means *a person who by contract or for hire applies by aerial, ground, or hand equipment pesticides to land, plants, seed, animals, waters, structures, or vehicles.*

(6) "Commercial operator" means *a person who applies pesticides under the supervision of a commercial applicator.*

(7) "Farm applicator" means *a person applying pesticides to his own crops or land.*

(8) "Public utility applicator" means *a person applying pesticides to land and structures owned or leased by a public utility.*

(9) "Beneficial insects" means those insects which, in the course of their life cycle, carry, transmit, or spread pollen to and from vegetation, act as parasites and predators on other insects, or are otherwise beneficial.

(10) "Crop" means a food intended for human or animal consumption or a fiber product.

(11) "Dealer" means a person who sells, wholesales, offers, or exposes for sale, exchanges, barter, or gives away within this state any pesticide except those pesticides which are to be used for home, yard, garden, home orchard, shade trees, ornamental trees, bushes, and lawn.

(12) "Defoliant" means a substance or mixture of substances for causing the leaves or foliage to drop from a plant, with or without causing abscission.

(13) "Desiccant" means a substance or mixture of substances for artificially accelerating the drying of plant tissue.

(14) "Device" means any instrument or contrivance intended for destroying, controlling, repelling, or mitigating pests but not equipment used for the application of pesticides.

(15) "Environment" means the soil, air, water, plants, and animals.

(16) "Equipment" means equipment used in the actual application of pesticides, including aircraft, ground sprayers and dusters, hand-held applicators, and water surface equipment.

(17) "Fungi" means all nonchlorophyll-bearing thallophytes (all nonchlorophyll-bearing plants of a lower order than mosses and liverworts) as, for example, rusts, smuts, mildews, molds, yeasts, and bacteria, except those resident on or in living man or other animals.

(18) "Fungicide" means a substance or mixture of substances for preventing, destroying, repelling, or mitigating any fungus.

(19) "Herbicide" means a substance or mixture of substances for preventing, destroying, repelling, or mitigating any weed.

(20) "Inert ingredient" means an ingredient which is not an active ingredient.

(21) "Ingredient statement" means either:

(a) A statement of the chemical name and common name and percentage of each active ingredient, together with the total percentage of the inert ingredients, in the pesticide; or

(b) A statement of the chemical name and common name of each active ingredient, together with the name of each and total percentage of the inert ingredients, if any, in the pesticide. *However, subsection (21) (a) of this section applies if the preparation is highly toxic to man, determined as provided in section 27-234, and if the pesticide contains arsenic in any form, the ingredient statement shall also include a statement of the percentage of total and water-soluble arsenic, each calculated as elemental arsenic.*

(22) "Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising six-legged, winged and wingless forms, *such* as beetles, bugs, wasps, flies, and keds, and to other classes of arthropods whose members are wingless and usually have more than six legs, *such* as spiders, mites, ticks, centipedes, and wood lice.

(23) "Insecticide" means any substance or mixture of substances for preventing, destroying, repelling, or mitigating any insects present in any environment.

(24) "Label" means the written, printed, or graphic matter on or attached to the pesticide or device, or *to its* immediate container, and *any* outside container or wrapper of *any* retail package of the pesticide or device.

(25) "Labeling" means all labels and other written, printed, or graphic matter:

- (a) Upon the pesticide or device or any of its containers or wrappers;
- (b) Accompanying the pesticide or device at any time;
- (c) To which reference is made on the label or in literature accompanying the pesticide or device, except when accurate, nonmisleading reference is made to current official publications of the United States environmental protection agency, departments of agriculture, interior, or health, education, and welfare, state experiment stations, state agricultural colleges, or other similar federal institutions or official agencies of this state or other states authorized by law to conduct research in the field of pesticides.

(26) "Misbranded" *applies*:

- (a) To a pesticide or device if its labeling bears any statement, design, or graphic representation relative to its ingredients which is false or misleading.
- (b) To a pesticide *if*:
  - (i) *It* is an imitation of or is offered for sale under the name of another pesticide;
  - (ii) *Its* labeling bears any reference to registration under this act;
  - (iii) *The* labeling accompanying it does not contain instructions for use necessary and, if complied with, adequate for the protection of the public;
  - (iv) *The* label does not contain a warning or caution statement necessary and, if complied with, adequate to prevent injury to living man or undue hazard to the environment;
  - (v) *The* label of the retail package which is presented or displayed under customary conditions of purchase does not bear an ingredient statement on that part of the immediate container and on the outside or on a wrapper through which the ingredient statement on the immediate container cannot be clearly read;

(vi) Any word, statement, or other information required to appear on the labeling is not prominently placed *on the labeling* with a conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in terms *rendering* it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(vii) In the case of an insecticide, nematocide, fungicide, or herbicide, when used as directed or in accordance with commonly recognized practice, it is injurious to living men or other vertebrate animals or vegetation, except weeds, to which it is applied, or to the person applying *the pesticide*;

(viii) In the case of a plant regulator, defoliant, or desiccant, when used as directed, it is injurious to man or other vertebrate animals or vegetation to which it is applied, or to the person applying *the pesticide*. Physical or physiological effects on plants or parts of *plants* are not injurious when this is the purpose for which the plant regulator, defoliant, or desiccant is applied in accordance with the label claims and recommendations.

(27) "Nematocide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating nematodes.

(28) "*Nematodes*," "*nemas*," or "*eelworms*" means invertebrate animals of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated, fusiform, or sac-like bodies covered with cuticle, and inhabiting soil, water, animals, plants, or plant parts.

(29) "Person" means any natural person, individual, firm, partnership, association, corporation, company, joint-stock association, body politic, or organized group of persons whether incorporated or not, and any trustee, receiver, assignee, or similar representative.

(30) "Pest" *includes* any insect, rodent, nematode, snail, slug, weed and any form of plant or animal life or virus, except virus on or in living man or other animal, which is normally considered a pest *or* which the department declares a pest.

(31) "Pesticide" means *any*:

(a) *Substance* or mixture of substances, including any living organism or any product derived *from a living organism*, intended for preventing, destroying, controlling, repelling, altering life processes, or mitigating any insects, rodents, nematodes, fungi, weeds, and other forms of plant or animal life or viruses, except viruses on or in living man or other animals, that may infect, or be detrimental to persons, vegetation, crops, animals, structures, or households or be present in any environment or which the department declares a pest;

(b) *Substance* or mixture of substances intended for use as a plant regulator, defoliant, or desiccant; and,

(c) *Other* substances intended for *that* use named by the department *by a rule adopted by it*.

(32) "Plant regulator" means any substance or mixture of substances affecting the rate of growth or rate of maturation or for otherwise altering

physiological condition of plants, but *does* not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.

(33) "Registrant" means the person registering any pesticide or device *under* the provisions of this act.

(34) "Restricted use pesticide" means any pesticide, including highly toxic pesticides, which the department of agriculture has found and determined, subsequent to a hearing, to be injurious when used in accordance with registration, label, directions and cautions to persons, beneficial insects, animals, crops or the environment other than the pests it is intended to prevent, destroy, control or mitigate.

(35) "Retailer" means any person who sells, offers, or exposes for sale, exchanges, barter, or gives away within this state any pesticide for home, yard, lawn and garden use, in quantities or concentrations as determined by the department of agriculture.

(36) "Weed" means any plant or part of the plant which grows where not wanted."

Section 121. Section 27-217, R.C.M. 1947, is amended to read as follows:

"27-217. **Registration.** (1) Every pesticide distributed, sold, or offered for sale within this state or delivered for transportation or transported in intrastate commerce or between points within this state, shall be registered with the department of agriculture. *The* registration shall be renewed annually by the manufacturer or formulator of the pesticide. The department of agriculture shall register all approved pesticides and those registered *are* subject to registration fees and all other provisions of this act. All registrations of pesticides expire on December 31 following the date of issuance, unless otherwise terminated.

(2) The applicant for registration shall file with the department of agriculture a statement including:

(a) The name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the registrant;

(b) A complete copy of the label of the pesticide, the United States environmental protection agency registration number, if the pesticide is so registered, and a statement of all claims to be made for it including directions for use;

(c) The trade and chemical name of the pesticide;

(d) If requested by the department of agriculture, a full description of tests made and the results upon which the claims are based. In the case of renewal of registration, a statement shall be required only with respect to information which is different from that furnished when the pesticide was registered or last reregistered.

(3) Any pesticide imported into this state, which is subject to the provisions of any federal act providing for the registration of pesticides and



which has been registered under the provisions of a *federal act*, shall be registered in the state. *However*, the state may restrict the use and application of the pesticide by type of applicator, time, and place and may establish special registrations of pesticides as outlined in *subsection (9) of this section and section 27-234 (3)*. The annual registration fee *must also be paid* and registration information required by the department of agriculture *must be provided*.

(4) The applicant shall pay an annual fee of ten dollars (\$10) for each pesticide registered. *Fees collected shall be deposited in the state treasury to the credit of the general fund.*

(5) The department of agriculture may require the submission of the complete formula and certified analytical standards of any pesticide. If it appears to the department of agriculture that the composition of the article *warrants* the proposed claims for it and if the article and its labeling and other material required to be submitted comply with the requirements of section 27-218, it shall register the article.

(6) If it does not appear to the department of agriculture that the article *warrants* the proposed claims for it or if the article and its labeling and other material required to be submitted do not comply with *this chapter*, it shall notify the applicant of the manner in which the articles, labeling, or other material required to be submitted fails to comply with the act so as to afford the applicant an opportunity to make the necessary corrections. If upon receipt of *the notice*, the applicant does not make the corrections, the department of agriculture may refuse to register the article. The department of agriculture in accordance with the procedures specified by the department of agriculture, may suspend or cancel the registration of a pesticide whenever it does not appear that the article or its labeling comply with this act. *When* an application for registration is refused or the department of agriculture proposes to suspend or cancel a registration, the registrant may appeal to the department of agriculture as provided for in section 27-236.

(7) The department of agriculture shall review all registered pesticides at least every two (2) years.

(8) *Registration* is not required in the case of a pesticide shipped from one plant *in this state* to another plant *in this state* by the same person.

(9) (a) The departments of health *and environmental sciences*, agriculture, and fish and game shall review all applications for registration of a pesticide or device submitted to the department of agriculture. The department of agriculture shall provide the departments of health *and environmental sciences* and fish and game with a complete copy of the application, related correspondence and a statement of the department of agriculture's proposed action on the application. The departments of health *and environmental sciences* and fish and game shall approve or disapprove the application within three (3) days after the receipt of the application. If the departments of health *and environmental sciences*, agriculture, and fish and game are in agreement with the proposed registration, the department of agriculture shall proceed with its registration.

(b) The department of agriculture shall establish a time and place for

an interagency conference for the purposes of resolving the registration of any pesticide or device. *If* two (2) of the departments *approve* the proposed registration, the *department of agriculture* shall proceed with the registration.

(c) The registrant applying for registration shall be notified as to proposed changes in registration. If the *departments* cannot resolve the proposed registration following the interagency conference, the registrant may request a joint administrative hearing before the departments of agriculture, health and environmental sciences, and fish and game.

(d) Following the interagency conference, and if requested, the administrative hearing, *if* the proposed registration of a pesticide or device has not been resolved, the *department of agriculture* shall appoint an advisory council as outlined in section 27-240 to resolve by majority vote the registration of any pesticide. The advisory council's recommendations on the registration shall be accepted by the *departments* and implemented by the department of agriculture."

Section 122. Section 27-222, R.C.M. 1947, is amended to read as follows:

"27-222. **Application for applicator's license.** (1) Application for a pesticide applicator's license provided for in section 27-221 shall be made annually, before applying pesticides in any calendar year, from the department of agriculture.

(2) If the application is made for a license to engage in aerial application of pesticides, the applicant shall first meet all of the requirements of the federal aviation agency and the *department of intergovernmental relations* to operate the equipment described in the application."

Section 123. Section 27-234, R.C.M. 1947, is amended to read as follows:

"27-234. **Rules and regulations.** (1) The department of agriculture *may* adopt by reference without a public hearing regulations adopted under the federal insecticide, fungicide, and rodenticide act, as amended. *The department may, after a public hearing, adopt all rules and regulations necessary to carry out this act.*

(2) The rules may prescribe methods of:

(a) *Registration*, application, use or restricting use, prohibiting use, offering or exposing for sale, any pesticide;

(b) *Determining* whether pesticides are highly toxic to man;

(c) *Determining* standards of coloring or discoloring for pesticides, and *subjecting* pesticides to the requirements of section 27-218;

(d) *Licensing* commercial applicators and operators, dealers, retailers, establishing methods of record keeping for applicators, operators, dealers, and retailers, and *providing* for the review of the records by the department of agriculture's authorized agent and the submission of the records to the department of agriculture upon written request;

(e) *Issuing* farm applicator special use permits and the maintenance and submission of records by farm applicators issued special use permits;

(f) *Collection*, examination, and standard deviation from guarantee analysis and umpire analysis of pesticides and devices;

(g) *Operating* and maintaining equipment used by applicators;

(h) *Developing* examinations which shall be held periodically throughout the state;

(i) *Establishing* the form and content of all applications for licenses and permits;

(j) *Designating* pesticides that may be sold at retail for home, yard, garden, and lawn use. The department of agriculture may also limit retail sale of pesticides, up to a specific number of pounds or gallons and concentration *which* would be sublethal to humans and animals if small amounts *of it* were accidentally swallowed, inhaled, sprayed, or dusted on the skin.

(k) *Revoking* licenses and permits;

(l) *Registering* or controlling any spray adjuvant, such as a wetting agent, spreading agent, deposit builder, adhesive, emulsifying agent, deflocculating agent, water modifier, or similar agent with or without toxic properties of its own intended to be used with any other pesticide as an aid to the application or effect *of that other pesticide*, whether or not distributed in a package or container separate from that of a pesticide with which it is to be used;

(m) *Registering* pesticide fertilizer and other chemical blends or, *instead* of registration, *establishing* licensing, inspection, and fees for blending plants.

(n) *Establishing* registration procedures for devices with a fee not to exceed five dollars (\$5) per type of device, specifying classes of devices to be registered and *providing* for additional requirements.

(3) Where the department of agriculture finds that *those* rules and regulations are necessary to carry out the purposes and intent of this act, *the* rules and regulations may relate to the time, place, manner, and method of registration, application, or selling of the pesticides, may restrict or prohibit use of pesticides in the state or in designated areas during specified periods of time and shall encompass all reasonable factors which the department of agriculture *considers* necessary to prevent damage or injury to:

(a) Persons, animals, or pollinating insects from the effect of drift or careless application;

(b) The environment;

(c) Plants, including forage plants;

(d) Wildlife;

(e) Fish and other aquatic life.

In issuing *the* regulations, the department of agriculture shall give consideration to pertinent research findings and recommendations of other agencies of this state or of the federal government.

(4) If the department of agriculture finds that an emergency exists which requires immediate action with regard to the registration, use or application of pesticides, the *department of agriculture* may, without notice or hearing, issue necessary orders, rules, or regulations to protect the public health, welfare, and safety. An order, rule, or regulation issued under this *subsection* is effective for a period no longer than sixty (60) days after it is issued. If the department of agriculture determines that the emergency order, rule, or regulation should remain in effect, a public hearing under section 27-235 shall be held within the sixty (60) day period to determine whether the order, rule, or regulation should be adopted by the department of agriculture.

(5) All rules, regulations, and orders issued by the department of agriculture shall be in writing, shall be entered in full in books to be kept by the department of agriculture for that purpose, shall be indexed, and shall be public records open for inspection at all times during reasonable office hours. Except for orders establishing or changing rules of practice and procedure, all orders made and published by the department of agriculture shall include and be based upon written findings of fact. A copy of any rule, regulation, or order certified by the department of agriculture or its secretary shall be received in evidence in all courts of this state with the same effect as the original."

Section 124. Section 27-235, R.C.M. 1947, is amended to read as follows:

"27-235. **Hearings.** (1) Public hearings. Except as provided in section 27-234, no rule or regulation shall be *adopted* by the department of agriculture without a public hearing upon at least twenty-one (21) days notice. The public hearing shall be held at such time and place as may be prescribed by the department of agriculture, and any interested person is entitled to be heard.

(a) Notice of public hearing on the adoption of rules or regulations shall be made by the department of agriculture as follows:

(i) Informal notice of the hearing will be sent to all registrants of pesticides, to all licensed pesticide applicators, including farm applicators with restricted use permits, and to all licensed pesticide dealers or retailers, provided that the notice shall be sent only to the respective group or groups directly affected by the rules and regulations. Farm applicators of nonrestricted pesticides will be given informal notice through farm groups, organizations or associations and by means of farm publications.

(ii) In all cases of public hearings for adoption of rules and regulations, notice thereof shall be published in five (5) newspapers of general circulation in the state once a week for two (2) successive weeks and the department of agriculture shall issue appropriate press releases.

(iii) Notices and publications shall be issued in the name of the state

of Montana, shall be signed by the *director* of agriculture, shall specify the style and number of the proceedings, and the time and place of the hearing, and shall briefly state the purpose of the proceeding and method of procedure.

(iv) Proof of service by publication shall be made by the affidavit of the printer or publisher of the newspaper. Proof of service by mailing shall be made by the affidavit of the *director* of agriculture.

(2) Complaints. In all cases where a complaint has been made by the department of agriculture or its authorized agents or by any person that any provision of this act or any rule, regulation, or order of the department of agriculture is being or has been violated, notice of the hearing to be held on such complaint shall be given to the interested persons.

(3) Except as otherwise in this act provided, the department of agriculture may act upon the petition of any interested person. On the filing of a petition concerning any matter within the jurisdiction of the department of agriculture, the department of agriculture shall promptly fix a date for a hearing thereon and shall cause notice of the hearing to be given. The hearing shall be held without undue delay after the filing of the petition. The department of agriculture shall enter its order and findings on complaints and petitions within thirty (30) days after the hearing."

Section 125. Section 27-236, R.C.M. 1947, is amended to read as follows:

"27-236. **Administrative appeals.** Persons adversely affected by a decision or proposed decision by the department of agriculture may request a hearing before the *director of agriculture* to show cause for the action or proposed action of the department of agriculture. (1) The application for a hearing shall be acted upon within ten (10) days after its filing, and if granted, the hearing shall be held without undue delay."

Section 126. Section 27-240, R.C.M. 1947, is amended to read as follows:

"27-240. **Advisory council.** (1) The *director* of agriculture may appoint an advisory *council* to study and make recommendations on special pesticide problems in the state. The *council* shall consist of individuals representing, equally, controlled industry, agriculture, health, and wildlife. Governmental personnel, university personnel not included, *may* not be represented on the *council*. Governmental personnel shall meet with the *council* in an advisory capacity when requested by the *council*. The *council* *may* not exceed twelve (12) members. The *director* of agriculture shall establish the time period in which the *council* shall *exist*. The time period *may* not exceed two (2) years. The department of agriculture shall provide the necessary administrative, secretarial, and any other essential items to the *council*.

(2) Each member of the *council* shall receive as compensation for his services the sum of twenty-five dollars (\$25) per day for each day actually *spent* in the performance of his duties and shall be reimbursed for actual per diem and necessary traveling expenses as provided by law.

(3) The *council* may request that the department of agriculture hold a public hearing as outlined in section 27-235, to assist it in gathering factual data and information on the special *problems* assigned it."

Section 127. Section 82-804.2, R.C.M. 1947, is renumbered section 75-8806, and is amended to read as follows:

"**75-8806. Duties of the cooperative extension service.** *The cooperative extension service within the department of education shall conduct investigations pertaining to insects and other arthropods affecting plants and animals. When an injurious infestation of an insect or other arthropod occurs in any part of the state, the authorized employees of the cooperative extension service shall go to the scene of the infestation, shall determine the extent and seriousness of the infestation, and make public the best remedies to be employed.*"

Section 128. Section 82-805, R.C.M. 1947, is renumbered section 3-3101, and is amended to read as follows:

"**3-3101. Definitions.** *Unless the context requires otherwise, in this chapter:*

(1) "*Apiary*" means a place where one (1) or more colonies of bees are kept, or one or more hives containing honeycombs or bee combs are kept.

(2) "*Equipment*" means hives, supers, frames, veils, gloves, or any apparatus, tools, machines, or other devices used in the handling and manipulation of bees, honey, wax, and hives, and includes containers of honey and wax which may be used in an apiary or in transporting bees and their products and apiary supplies.

(3) "*Hive*" means a frame hive, box hive, box, barrel, log gum, skep, or other receptacle or container, natural or artificial, or a part of a container, which may be used as a domicile for bees.

(4) "*Bees*" means any stage of the bees in the genus *Apis*.

(5) "*Bee diseases*" means American or European foulbrood, sacbrood, bee paralysis, or other disease or abnormal condition of egg, larval, pupal, or adult stages of bees.

(6) "*Colony*" means the hive and all equipment used in connection with the hive.

(7) "*Persons*" means individuals, associations, partnerships, or corporations.

(8) "*Queen Apiary*" means an apiary or premises in which queen bees are reared or kept for sale or gift."

Section 129. Section 82-806, R.C.M. 1947, is renumbered section 3-3102, and is amended to read as follows:

"**3-3102. Apiaries — powers and duties of the department of agriculture.** To prevent the spread of contagious and infectious disease among bees and apiaries, the department of agriculture *may*:

(1) *Order* the transfer of colonies of bees from hives or containers

which cannot be properly examined for brood or other diseases to other hives or containers;

(2) *Order* disinfection of any bee, beehive, brood comb, or any other equipment which is infected or contaminated and burn any *infected or contaminated* bee, beehive, brood comb, or any other equipment, if, in *its* judgment, disinfection will not remove the infection or contamination. *Before* burning any property, the department shall give the owner or person in charge a written notice at least five (5) days *before* the date on which *the* property will be burned. *The* notice *shall* be given by registered mail or *personal service* upon the owner or person in charge of *the* property.

(3) *Quarantine* any apiary where foulbrood or any contagious or infectious diseases are present and, during *the* quarantine, prevent the removal from *the* apiary of any bees or equipment *except* under a special permit issued by the department permitting *the* removal under conditions prescribed by *it*. A person *may not* sell or offer for sale any apiary, bees, or equipment *which are* under quarantine, unless a permit authorizing *the* sale or removal is *issued* by the department. Written notice of quarantine shall be posted by the department, owner, or person in charge at *the* *quarantined* apiary at a conspicuous place and a copy shall be personally served or sent by registered mail to the owner of *the* apiary or person in charge. *The* quarantine *continues* in effect until it is ordered removed and a copy of *the* removal *order* served in the same manner.

(4) *Inspect* any apiary, hives, equipment or premise for the presence of disease."

Section 130. Section 82-807, R.C.M. 1947, is renumbered section 3-3103, and is amended to read as follows:

"3-3103. **Registration.** (1) A person who *owns or possesses* an apiary in the state shall, before April 1 each year, *register* the apiary.

(2) Applications shall be made to the department for registration blanks.

(3) Registration blanks shall be furnished by the department. *The* blank shall contain: (a) a statement of the name, place of residence, and place of business of the owner; (b) the number of colonies of bees, hives, and equipment in *the* apiary; (c) the location of *the* apiary, setting forth specifically the location by sectional division to the nearest quarter section, and the township and range, and, if within the corporate limits of a town or city, the number of the lot and block in the town or city; (d) the name of the owner, renter, or occupant of the land on *which* the apiary is located; (e) *the date when the location was first established*; and (f) other information the department may require under rules *adopted* by *it* for the protection, safety, and welfare of the public and beekeeping industry.

(4) Upon receipt of *the* application, and payment of the fees prescribed, the department shall issue a certificate of registration for an apiary, setting forth the name of the owner, the specific location, and the number of colonies of bees or size of the apiary authorized under *the* registration.

(5) In issuing certificates of registration for apiaries, if there is a conflict between applicants with respect to location, the department shall give preference to the applicant having the oldest continuous established location.

(6) Certificates of registration *may* not be issued for new locations of apiaries which are within such close proximity to established registered apiaries that there is or may be danger of spread of disease, or that *the* proximity will or may interfere with the proper feeding and honey flow of established apiaries.

(7) Before authorizing the establishment of new locations, the department shall give at least ten (10) *days' notice* by registered letter to all registered apiarists likely to be affected by the proposed new location so that any party affected may file written protests with the department against authorizing *the* new locations. *If* a written protest is filed, the department may require a hearing. *Notice* of the time and place of *the* hearing shall be given all parties interested by registered mail at least ten (10) days before the date set for the hearing.

(8) Suitable evidence of registration furnished by the department shall be posted in a conspicuous place at or near the location of the colony of honeybees or beehives. If an owner has more than one location, suitable evidence of registration furnished by the department shall be posted at each location.

(9) A registration not applied for by April 1 of each year *is* a late registration and *incurs* an added penalty of ten (10) per cent of the regular registration fee. Registrants who fail to apply for reregistration by April 1 of each year, shall be notified of their delinquency by the department. *The* notification shall be by registered mail and *is* sufficient if deposited in a United States post office or mail box and addressed to *the* registrant at his last address appearing in the bee location registration files of the department at least ten (10) days *before* May 1. A location for which application for reregistration is not made by May 1 of each year *is forfeited* and all rights *under the location* terminate."

Section 131. There is a new section to be numbered 3-3104, R.C.M. 1947, which reads as follows:

**3-3104. Changing locations — enlarging or selling apiaries.** (1) An owner of an established registered apiary may not change locations without first receiving from the department a permit to establish the new location. In making the application, he shall specify the location with the same particularity as in the application or original registration. If the new location is not used within sixty (60) days after a permit is issued, the permit lapses and all rights under the permit terminate. Permits for new locations may not be issued for greater areas than the applicant can show are reasonably necessary for his needs consistent with good beekeeping practice.

(2) Any right a beekeeper has to a location may be sold or transferred to a purchaser subject to this chapter, if all bees and equipment on the location are sold to the purchaser.



Section 132. There is a new section to be numbered 3-3105, R.C.M. 1947, which reads as follows:

**3-3105. Apiaries — termination of rights — abandonment.** (1) An old apiary location which is not stocked with bees during at least part of the normal build-up or honey-producing season is forfeited and all rights under the location terminate. The location is open for new registration at the next regular registration time.

(2) An apiary not regularly attended in accordance with good beekeeping practice, which comprises a hazard or threat to disease control in the beekeeping industry, or which by reason of its physical condition or construction cannot be inspected may be considered an abandoned apiary and may be seized by the department. Any diseased equipment or equipment which by reason of its physical condition or construction cannot be inspected, may be burned and the remainder may be sold at public auction. Proceeds, after the cost of the sale are deducted, shall be returned to the former owner or his estate. Before burning or selling any equipment, the department shall give the owner or person in charge a written notice at least five (5) days before the burning or sale. The notice shall be given by registered mail or personal service upon the owner or person in charge of the property. If the owner or person in charge cannot be located, a registered letter sent to the owner's last address registered with the department is sufficient notice under this section.

Section 133. Section 82-808, R.C.M. 1947, is renumbered section 3-3106, and is amended to read as follows:

**"3-3106. Registration fees.** (1) Each year before a certificate of registration *may* be issued for *an* apiary, the owner or applicant for *the* certificate shall pay the department a registration fee in accordance with the following schedule of fees for the total number of colonies owned or possessed:

|                               |         |
|-------------------------------|---------|
| 1 to 10 colonies of bees..... | \$ 2.50 |
| 11 to 50 colonies .....       | 5.00    |
| 51 to 200 colonies .....      | 10.00   |
| 201 to 300 colonies .....     | 15.00   |
| 301 to 500 colonies .....     | 20.00   |
| 501 to 1000 colonies .....    | 30.00   |
| 1001 to 2000 colonies .....   | 35.00   |
| 2001 to 3000 colonies .....   | 45.00   |
| 3001 to 4000 colonies .....   | 55.00   |
| 4001 to 5000 colonies .....   | 65.00   |
| 5001 colonies and upward..... | 75.00   |

(2) If, after registration, additional or new colonies are added, fees shall be paid in accordance with the schedule *in subsection (1)* for the total number of colonies for that year."

Section 134. Section 82-809, R.C.M. 1947, is renumbered section 3-3107, and is amended to read as follows:

**"3-3107. Inspection of bees or used beekeeping equipment transported interstate.** (1) *A person may not transport or bring into the state any used beekeeping equipment or containers, including honey to be extracted, unless it is certified and duly marked as disease-free by an official, responsible for apiary regulations, of the state from which it is being moved. The department shall be advised in advance of the date of entry and the destination of the material. Used equipment transported into the state shall be quarantined by the department in accordance with subsection (3) of section 3-3102, from the time it enters the state until it has been in use while under quarantine for a minimum of ninety (90) days and at least until the following July 1.*

The department may also inspect, and certify as disease-free, bees or beekeeping equipment which are to be transported from Montana to a state which requires an inspection in the state of origin.

(2) *The costs of making the inspections provided for in subsection (1) shall be paid in advance by the owner of the bees or equipment and shall include a per diem of ten dollars (\$10), necessary traveling expenses, and a fee of five dollars (\$5) for the issuance of a certificate of health. If inspection by an official of any other state is considered insufficient for the protection of the Montana bee industry by the department, the department shall so state by public statement. Importation of beekeeping materials, including honey for extracting, from that other state shall be denied, unless the materials or honey are first inspected by the department, and there is obtained from it a certificate of inspection showing that the materials or honey are apparently free from contagious or infectious disease. The costs of making the inspection shall be paid by the person requesting it, and inspection may be made at any point outside this state convenient to the person making the inspection. The department may require that the costs of making the inspection be paid in advance and the costs shall include per diem of ten dollars (\$10), necessary traveling expenses, and a fee of five dollars (\$5) for the issuance of the certificate of inspection. The beekeeping materials are also subject to quarantine as provided in this section."*

Section 135. Section 82-810, R.C.M. 1947, is renumbered section 3-3108, and is amended to read as follows:

**"3-3108. Importation of bees in combless packages.** *A person or common carrier may not transport or bring into this state bees in combless packages unless they are accompanied by a certificate of health issued by the official inspector of the state or country from which they came."*

Section 136. Section 82-811, R.C.M. 1947, is renumbered section 3-3109, and is amended to read as follows:

**"3-3109. Disposition of fees.** *Registration and inspection fees collected under this chapter shall be transmitted by the department to the state treasurer, who shall deposit the monies to the credit of the general fund."*

Section 137. Section 82-812, R.C.M. 1947, is renumbered section 3-3110, and is amended to read as follows:

**"3-3110. Penalties.** A person violating this *chapter* is guilty of a misdemeanor and *shall be fined* not less than twenty-five dollars (\$25) nor more than five hundred dollars (\$500), or *imprisoned* in the county jail not exceeding one (1) year, or both *fined and imprisoned*."

Section 138. Section 82-813, R.C.M. 1947, is renumbered section 3-3111, and is amended to read as follows:

**"3-3111. Separability of act.** If any clause, sentence, section, paragraph, part or portion of this *chapter* shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, unconstitutional or inoperative, such judgment *does* not affect, impair or invalidate the validity of the *chapter* as a whole, or the remainder of this or any part thereof which can be given effect, but shall be confined in its operation to the particular clause, sentence, section, paragraph, part or portion directly adjudged to be so invalid, unconstitutional or inoperative."

Section 139. Section 82-814, R.C.M. 1947, is renumbered section 3-3112, and is amended to read as follows:

**"3-3112. Orders effective until reversed or modified by court.** Until reversed or modified by a court of competent jurisdiction *an order or rule adopted* by the department, including *an order* refusing a permit for the establishment of a new apiary location, *is* effective until reversed or modified by a final decision, or final judgment, and while such action is pending, *as defined in* section 93-8706. *An* injunction or other process or writ *may not* be issued by a court restraining enforcement until *that* final determination."

Section 140. Section 82-1501, R.C.M. 1947, is amended to read as follows:

**"82-1501. State board of hail insurance — creation and powers — insurance, how effected.** (1) There is a state board of hail insurance of five members consisting of the state treasurer, the *director* of agriculture, who *is* secretary of *the* board, and three other members to be appointed by the governor from names submitted by farmer *organizations* having a general membership throughout the state. The governor shall designate one of *the* appointive members to act as chairman of the board. Whenever the term of any member *expires*, either by death, resignation, removal for cause, or expiration of his term of office, the governor shall appoint his successor, and shall also appoint one of the board for chairman in case of a vacancy in that office.

(2) Each appointive member of the board shall be appointed for three years, except where such appointment is made to fill a vacancy on the board, in which event such appointee shall fill out the unexpired term of the member whose place he fills. All members of the board shall be subject to removal for cause by the governor; the board shall hold meetings when necessary and essential for the proper conduct of its business, at the state capitol in the office of the secretary, and is hereby authorized, directed and empowered to make rules as it may from time to time find

practical, necessary and beneficial for the *administration* of this act. It shall *prescribe* blank forms for all purposes necessary, proper and incidental to the effective operation and enforcement of this act; it shall *prescribe* a special form outlining the purposes, scope and benefits of this act in furnishing protection against loss by hail, at the actual cost of the risk to all taxpayers who may elect to become subject to the provisions of this act, *the* form to be submitted by the agent of the department of revenue in each county at the time in which the regular assessments of property are *made* by *the* agents, to each farmer in each county in the state engaged in growing of crops subject to injury or destruction by hail, on which forms each such farmer taxpayer shall signify whether he desires to become subject to the provisions of this act or not.

(3) Every farmer taxpayer who signifies his desire to become subject to the provisions of this act, shall file in the office of the county assessor the properly filled out *form* not later than August 15th, and shall be chargeable with the tax on lands growing crops subject to injury or destruction by hail, hereinafter provided for, and shall share in the protection and benefits under the hail insurance provisions of this act. Such application for hail insurance shall be in full force and effect at noon the day following the acceptance of the same by the county assessor. Provided, however, that this act shall not be so construed as to empower anyone except the actual owner of the land to make such land subject to the hail tax provided in this act."

Section 141. Section 82A-301, R.C.M. 1947, is amended to read as follows:

"82A-301. **Department of agriculture — creation — head.** There is a department of agriculture. *The department head is a director of agriculture appointed by the governor in accordance with section 82A-106.*"

Section 142. There is a new section to be numbered 82A-301.1, R.C.M. 1947, which reads as follows:

82A-301.1. **Functions of department.** The department and its units are responsible for administering laws pertaining to agriculture, including, but not limited to:

- (1) Regulation of grain (Title 3, chapter 2);
- (2) Seed warehousemen (Title 3, chapter 3);
- (3) Bean warehousemen (Title 3, chapter 7);
- (4) Agricultural seeds (Title 3, chapter 8);
- (5) Barberry control (Title 3, chapter 10);
- (6) Horticulture (Title 3, chapter 11);
- (7) Nurseries and nurserymen (Title 3, chapter 12);
- (8) Orchards (Title 3, chapter 13);
- (9) Standard grades and brands (Title 3, chapter 14);
- (10) Commercial fertilizer (Title 3, chapter 17);
- (11) Mustard seed (Title 3, chapter 19);
- (12) Commercial feeds (Title 3, chapter 20);
- (13) Rural rehabilitation (Title 3, chapter 28);
- (14) Wheat research and marketing (Title 3, chapter 29);
- (15) Agricultural marketing (Title 3, chapter 30);
- (16) Apiculture (Title 3, chapter 31);
- (17) Itinerant merchants (Title 3, chapter 32);
- (18) Produce wholesalers (Title 3, chapter 33);

- (19) Apples, grades, and boxes (Title 3, chapter 34);
- (20) Pesticides (Title 27, chapter 2).

Section 143. Section 82A-304, R.C.M. 1947, is amended to read as follows:

**"82A-304. Montana wheat research and marketing committee — composition — qualification — term — allocation.** (1) *There is a Montana wheat research and marketing committee.*

(2) (a) *The committee consists of seven (7) members and three (3) ex officio, non-voting members.*

(b) *The governor shall appoint one member from each of the following districts:*

- (i) *District I, consisting of Daniels, Sheridan, and Roosevelt counties;*
- (ii) *District II, consisting of Valley, Phillips, Blaine, and Hill counties;*
- (iii) *District III, consisting of Liberty, Toole, Glacier, and Pondera counties;*

(iv) *District IV, consisting of Chouteau and Teton counties;*

(v) *District V, consisting of Lewis and Clark, Cascade, Judith Basin, Fergus, Petroleum, Meagher, Broadwater, Wheatland, Golden Valley, and Musselshell counties;*

(vi) *District VI, consisting of Big Horn, Yellowstone, Stillwater, Carbon, Sweet Grass, Park, Gallatin, Madison, Jefferson, Silver Bow, Beaverhead, and all counties west of the continental divide;*

(vii) *District VII, consisting of Garfield, McCone, Rosebud, Richland, Dawson, Wibaux, Prairie, Carter, Custer, Fallon, Powder River, and Treasure counties.*

(c) *The ex officio members are:*

- (i) *The director of the department of agriculture;*
- (ii) *The dean of agriculture of Montana state university;*
- (iii) *A representative of the grain trade in Montana elected by a majority of the appointed members.*

(d) *Each of the appointed members shall be a citizen of Montana, derive a substantial portion of his income from growing wheat in this state, and be a resident of and have farming operations in the district from which appointed. No more than four (4) of the appointed members may be of the same political party.*

(e) *A list of nominees for appointment may be submitted to the governor by the Montana farmers union, Montana farm bureau, Montana grange, and the Montana grain growers association. Names of nominees shall be submitted within ninety-one (91) days before the expiration of a committeeman's term.*

(3) (a) *The appointed members shall serve staggered terms of five (5) years. The ex officio representative of the grain trade shall serve at the pleasure of the committee.*

(b) *A member may be removed by the governor, after a full public hearing before the governor, for malfeasance, misfeasance, or neglect of duty. Removal proceedings may not be started except upon duly verified written charges. The member shall be given a copy of the written charges at least ten (10) days in advance of the hearing. At the hearing, the member may be represented by an attorney and may present witnesses in his behalf.*

(c) *A member who ceases to reside in the state or in the district from which he was appointed, or who ceases to grow wheat in the state or district, is disqualified from membership and his office becomes vacant. If the member refuses to recognize his disqualification, the refusal is cause for removal.*

(4) The committee is allocated to the department for administrative purposes only as prescribed in section 82A-108."

Section 144. Section 84-3001, R.C.M. 1947, is renumbered section 3-3201, and is amended to read as follows:

**"3-3201. "Itinerant merchant" defined.** For the purpose of this chapter, "itinerant merchant" means a person who buys, offers to buy, sells, or offers to sell in this state, at wholesale or retail, any produce as defined by section 3-3401, who does not hold a license under the provisions of chapter 34 of this Title, and transports the produce in this state by use of a motor vehicle, or by any other method of transportation, except as otherwise provided, or who has not secured a permit of exemption."

Section 145. Section 84-3002, R.C.M. 1947, is renumbered section 3-3202, and is amended to read as follows:

**"3-3202. "Established place of business" defined.** "Established place of business," for the purpose of this chapter means a permanent warehouse, building, or structure, in which a permanent business is carried on in good faith and not for the purpose of evading this chapter, and in which stocks of the property being transported are produced, stored, or kept in quantities reasonably adequate for, and usually carried for, the requirements of the business, and which is recognized, licensed, and taxed as a permanent business at the place. The term does not mean residences, tents, temporary stands or other temporary quarters, a railway car, or permanent quarters occupied under a temporary arrangement."

Section 146. Section 84-3003, R.C.M. 1947, is renumbered section 3-3203, and is amended to read as follows:

**"3-3203. Persons not included.** The term "itinerant merchant" does not include the following:

(1) A person using a motor vehicle owned by him, whether operated by him or his agent, for the transportation of produce produced by him on owned or leased premises, when the entire course of the transportation extends not more than one hundred fifty (150) miles from his residence, whether the residence is within or outside this state;

(2) A person handling produce grown by him who has secured from the department of agriculture, before offering the produce for sale, a permit of exemption. The permit shall be issued by the department upon

application and payment of a fee of one dollar (\$1). *The applicant must first be able to satisfactorily show that he will sell, or offer for sale, only produce of his own production. The permit shall only allow the sale of produce of his own production and is forfeited if the holder sells or offers to sell any produce not of his own production;*

(3) A person transporting property owned by him in a motor vehicle owned by him, whether operated by him or his agent, when *the* transportation is incident to a business conducted by him at an established place of business operated by him, either within or *outside* this state, and when *the* property is being transported to or from an established place of business, operated by him in this state;

(4) A person transporting property for his own consumption or use and not for sale."

Section 147. Section 84-3004, R.C.M. 1947, is renumbered section 3-3204, and is amended to read as follows:

**"3-3204. Who shall be exempt — affidavit.** No person *is* exempt from this *chapter* unless he or the driver of the motor vehicle upon which his property is being transported, upon the request of a peace officer or person charged with the enforcement of this *chapter*, *executes* an affidavit containing *those* facts the *department requires* and *delivers* the affidavit to the peace officer or *person*. The affidavit must clearly show that the person claiming the exemption is entitled to one or more of the exemptions provided in this *chapter*."

Section 148. Section 84-3005, R.C.M. 1947, is renumbered section 3-3205, and is amended to read as follows:

**"3-3205. Itinerant merchant license required.** A person *may not* engage in business as an itinerant merchant without obtaining a *license* from the *department*."

Section 149. Section 84-3006, R.C.M. 1947, is renumbered section 3-3206, and is amended to read as follows:

**"3-3206. Application for license — fee.** (1) An application for a license to engage in business as an itinerant merchant shall be made to the department upon forms prepared by *it*.

(2) A separate application and license *is* required for each motor vehicle to be operated. *The* application shall contain *those* facts the *department requires*. The fee for each license *is* one hundred dollars (\$100) for the calendar year in which it is issued, and each license *expires December 31 of the* calendar year in which issued. The proper fee shall accompany the application. The application shall be signed and sworn to by the applicant."

Section 150. Section 84-3007, R.C.M. 1947, is renumbered section 3-3207, and is amended to read as follows:

**"3-3207. Surety bond.** A license *may not* be issued until the applicant *has* filed a surety bond issued by a company authorized to do business in the state. *The bond must first be approved by the department and shall*

*be for not less than one thousand dollars (\$1,000). The bond shall be in a form prescribed by the department and shall be conditioned upon the delivery of honest weights, measures, or grades, accurate representation as to quality or class of produce, the actual payment of checks, drafts, or other obligations delivered by the itinerant merchant in exchange for the purchase of produce, and the payment of all other obligations incurred by him."*

Section 151. Section 84-3008, R.C.M. 1947, is renumbered section 3-3208, and is amended to read as follows:

**"3-3208. License, issuance, form and display of.** Upon approval of the application and bond and upon compliance with this *chapter*, the *department* shall issue the applicant an itinerant *merchant's license* in a form *prescribed by the department*. The license shall at all times be carried by the driver of the motor vehicle described and *is* at all times subject to inspection by any person."

Section 152. Section 84-3009, R.C.M. 1947, is renumbered section 3-3209, and is amended to read as follows:

**"3-3209. License nontransferable.** A license issued *under this chapter* may *not* be sold or transferred, and a license may *not* be transferred from one vehicle to another, without the written consent of the *department*."

Section 153. Section 84-3010, R.C.M. 1947, is renumbered section 3-3210, and is amended to read as follows:

**"3-3210. Revocation of license.** *After a hearing the department* may revoke a license issued under this *chapter* for failure to comply with any *law*."

Section 154. Section 84-3011, R.C.M. 1947, is renumbered section 3-3211, and is amended to read as follows:

**"3-3211. Administrative rules.** The *department* shall *adopt* and enforce *necessary and proper* rules for the administration of this *chapter*."

Section 155. Section 84-3012, R.C.M. 1947, is renumbered section 3-3212, and is amended to read as follows:

**"3-3212. Offending vehicle to be kept in custody.** A motor vehicle operated in violation of this *chapter* shall be kept in the custody of a *law enforcement officer* or person authorized to enforce this *chapter* and may not be operated except under *its* authority and solely for the purpose of taking it to the nearest convenient place of custody, until this *chapter* has been complied with."

Section 156. Section 84-3013, R.C.M. 1947, is renumbered section 3-3213, and is amended to read as follows:

**"3-3213. Disposition of license fees.** All license fees *received* under this *chapter* by the *department* shall be deposited with the state treasurer and shall be used to defray the cost of administration and enforcement of this *chapter*."



Section 157. Section 84-3014, R.C.M. 1947, is renumbered section 3-3214, and is amended to read as follows:

**"3-3214. Construction of act.** Nothing in this act *repeals or amends* any statute delegating authority to any county or municipal corporation to license, tax, or regulate peddlers or itinerant merchants. This act *does not repeal or amend* any of the provisions of chapter 34 of this Title."

Section 158. Section 84-3015, R.C.M. 1947, is renumbered section 3-3215, and is amended to read as follows:

**"3-3215. Penalty.** A person violating this act *is* guilty of a misdemeanor and shall be *finned* not less than twenty-five dollars (\$25) *nor* more than two hundred dollars (\$200)."

Section 159. Section 84-3402, R.C.M. 1947, is renumbered section 3-3302, and is amended to read as follows:

**"3-3302. Produce wholesalers' license.** A person *may not* engage in or purport to be engaged in the business of a dealer at wholesale unless he is licensed by the *department of agriculture*. This chapter does not apply to a farmer or gardener selling his own products, *and* who shall *when* called upon to do so by *the department* furnish a sworn statement that the goods handled by him were actually grown by him. *Employees of the department may for the purpose of this section administer the oath. Also, this chapter does not apply to a trucker operating for hire under a license issued by the public service commission and not buying or selling produce, to a dealer at retail, or to a consumer or group of consumers co-operatively obtaining produce for their own use only and not for resale.*"

Section 160. Section 84-3403, R.C.M. 1947, is renumbered section 3-3301, and is amended to read as follows:

**"3-3301. Definitions.** *Unless the context requires otherwise, in this chapter:*

(1) *"Produce"* means the natural products of the farm, and *includes, but is not limited to,* natural products of the orchard, vineyard, garden, and apiary, raw and manufactured (except grains, dairy products, livestock, poultry and poultry products), when handled for the purpose of resale.

(2) *"Person"* means an individual, group of persons, exchange, firm, copartnership, corporation, or association.

(3) *"Dealer at wholesale"* means a person who *buys to sell at wholesale or contracts to buy to sell at wholesale, or who handles at wholesale on account of or as agent for another.*"

Section 161. Section 84-3404, R.C.M. 1947, is renumbered section 3-3303, and is amended to read as follows:

**"3-3303. Application for license — contents — bond — expiration date — schedule of commissions and charges to be filed.** (1) Licenses to engage in the business of a dealer at wholesale *in this state* shall be issued by the *department* to reputable persons *who* apply for a license and pay the prescribed fee.

(2) The application shall be in writing, accompanied by the prescribed fee, and under oath. *It shall state:* (a) the place where the applicant intends to carry on the business for which the license is desired; (b) the estimated amount of business to be done monthly; (c) the full names of the persons constituting the firm, *if* the applicant is a copartnership; (d) the names of the officers of the corporation, *the place of incorporation*, corporation; and (e) a financial statement showing the value and character in a general way of the assets and the amount of liabilities of the applicant.

(3) Before issuing a license, the *department* shall require the applicant to file with *it* a bond to *this* state in an amount to be fixed by the *department* based on the monthly business to be transacted by the applicant. *The bond shall not be for less than one thousand dollars (\$1,000). The department may require additional bond if the business transacted warrants an increase, under penalty of revoking the license. The bond shall be executed by the applicant as principal and a surety company authorized to do business in this state as surety. The form of the bond shall be fixed by the department, conditioned upon:* (a) faithful performance of his duties as a dealer at wholesale; (b) observance of all laws relating to the business of a dealer at wholesale; (c) payment, when due, of the purchase price of produce purchased by him; (d) for the prompt reporting of sales as required by law to all persons consigning produce to the dealer as licensee for sale on commission; and (e) the prompt payment to persons entitled to the proceeds of *the* sales less lawful charges, disbursements, and commissions. The bond shall cover all wholesale produce business transacted in *this* state.

(4) All licenses expire December 31 of each year. *The license, or a certified copy of the license, shall be kept posted in the office of the licensee at each place in this state where he transacts business. The fee for each license is one hundred dollars (\$100) and for each certified copy of a license, one dollar (\$1). If a truck is the place of business the license fee for the first truck is one hundred dollars (\$100) and for each additional truck fifty dollars (\$50).*

(5) The applicant shall file with the *department* a schedule of his commissions and charges for services in connection with produce handling on account of or as agent for another.

(6) *A separate license is required for each place of business. Each truck used for assembling and distributing produce, other than from a permanently established place of business through which all business of sales and accounts is handled, is a separate place of business and must be licensed."*

Section 162. Section 84-3405, R.C.M. 1947, is renumbered section 3-3304, and is amended to read as follows:

**"3-3304. Investigation of applicant — hearings — grant or denial of license.** The *department* shall examine *each* application and *investigate* the applicant and his business, business rating, character, and reputation. If, from the examination and investigation, the *department determines* that the applicant is in the matter of his business, business rating, char-

acter, and reputation not properly qualified to engage in business as a dealer, *it* shall refuse to grant a license and shall deny the application, and notify the applicant in writing of *its* decision. An applicant whose application is denied by the *department* may, within ten (10) days after the mailing of notice of rejection, petition *the department* for a hearing. *The department* shall afford *the* applicant an opportunity for a hearing on a date not less than ten (10) nor more than twenty (20) days after the receipt of *the* petition. A *person* who *has* objected to the licensing of *the* applicant shall be given at least ten (10) days' notice of *the* hearing by mail. After *the* hearing, the *department* shall *grant or* deny the application."

Section 163. Section 84-3406, R.C.M. 1947, is renumbered section 3-3305, and is amended to read as follows:

**"3-3305. Records to be kept — contents.** (1) Every dealer in produce shall keep a complete record of all produce handled by him. *The record shall include:*

- (a) The name and address of the producer or shipper;
- (b) The date of receipt of each consignment;
- (c) The kind and quantity of produce received;
- (d) The agreed purchase price or commission charged;
- (e) Date of sale;
- (f) Price at which sold;
- (g) The name of the person, firm, or corporation to whom sold;
- (h) An itemized statement of charges to be paid by the producer in connection with the sale;
- (i) The record shall be open for confidential inspection by the *department*."

Section 164. Section 84-3407, R.C.M. 1947, is renumbered section 3-3306, and is amended to read as follows:

**"3-3306. Inspection and report concerning produce.** *When a dealer at wholesale, to whom produce has been shipped, is consigned for sale on a commission basis, or is on consignment, or has been shipped under any circumstances in which the title to the produce remains with the shipper, has received the produce, he shall within a reasonable time, make a written report to the shipper. The report shall include the exact time of arrival and the quantity and quality of the produce. If the produce is received in a decayed or damaged condition noticeable upon arrival, the dealer shall have the common carrier or the department make proper record certifying the condition. The dealer shall notify the consignor promptly so that the consignor can take further action to verify the report.*"

Section 165. Section 84-3408, R.C.M. 1947, is renumbered section 3-3307, and is amended to read as follows:

**"3-3307. Enforcement of chapter — hearings.** (1) *The department, upon its own motion may, or upon verified complaint against any dealer or any person, firm, exchange, association, or corporation assuming or attempting to act as such, shall make all investigations it considers necessary. The department shall have at all times free and unimpeded access to all buildings, yards, warehouses, storage, and transportation or any other facilities or places in which any produce is kept, stored, handled, or transported. If the department, upon investigation, believes that a dealer is not acting in accordance with this chapter, or if a verified complaint is filed against any dealer, the department shall have personal service made on the dealer or shall mail by registered mail a complaint or a copy of the verified complaint against the dealer. If dealer fails to make informal adjustment or settlement of the charges, to the satisfaction of the department, the department shall give notice of the time and place of a formal hearing. Notice of the hearing shall be given at least twenty (20) days before the hearing and the hearing shall be held in the city or town in which the transaction complained of is alleged to have occurred.*

(2) *At the hearing, copies of records, inspection certificates, certified reports, and all papers on file in the office of the department are prima facie evidence of the matters contained in them.*

(3) *After the hearing, the department shall dismiss the charges, suspend the license of the dealer for a specified period, revoke the licenses, or make any other appropriate order considered just and proper. The order shall specify its effective date and any order other than one suspending or revoking a license shall automatically suspend the license until the order is complied with."*

Section 166. Section 84-3410, R.C.M. 1947, is renumbered section 3-3308, and is amended to read as follows:

**"3-3308. Effect of appeal to district court.** *If the revocation of the license of a produce dealer is appealed to a district court, the license remains in force until the final determination by the court. A license may not be refused during the time or on account of the pendency of any review proceedings."*

Section 167. Section 84-3413, R.C.M. 1947, is renumbered section 3-3309, and is amended to read as follows:

**"3-3309. Rules for enforcement of chapter.** *The department shall adopt rules for carrying out and enforcing this chapter."*

Section 168. Section 84-3414, R.C.M. 1947, is renumbered section 3-3310, and is amended to read as follows:

**"3-3310. Cooperation with similar agencies.** *The department shall cooperate with the United States department of agriculture and with other federal authorities, and with the state and municipal authorities of this and other states, and shall perform those other acts necessary in carrying out this chapter."*

Section 169. Section 84-3415, R.C.M. 1947, is renumbered section 3-3311, and is amended to read as follows:

**"3-3311. Disposition of license fees.** All license fees *received by the department* under this *chapter* shall be paid into the state treasury and deposited in a revolving fund to be *spent* by the *department* upon approval of the state treasurer. All moneys so deposited shall be held *for the department to use* in carrying out this *chapter*."

Section 170. Section 84-3416, R.C.M. 1947, is renumbered section 3-3312, and is amended to read as follows:

**"3-3312. Violation a misdemeanor — penalty.** A person who *violates* this act, *fails* to comply with *rules adopted under this chapter*, or *fails* to obey an order of the department made *under this chapter* is guilty of a misdemeanor and shall be *finned* not less than twenty-five dollars (\$25) nor more than five hundred dollars (\$500), or *imprisoned* in the county jail for not *more than* six (6) months, or both *finned and imprisoned*. The fine shall be paid into the state treasury and deposited as provided in section 3-3411."

Section 171. Section 90-203, R.C.M. 1947, is renumbered section 3-3404, and is amended to read as follows:

**"3-3404. Designation of grade of bulk apples.** Apples shipped or sold in bulk shall have two cards at least ten by twelve inches (10" x 12") in size attached to the doors of the car, or on each side of truck in which they are moved. *The cards shall designate the grade of the apples contained in the car or truck as specified in section 3-3402 and shall be in legible printed letters at least two inches in height.*"

Section 172. The codifier of the Revised Codes of Montana shall transfer sections 90-201, 90-202, 90-203 through 90-206 to Title 3, chapter 34, R.C.M. 1947, and shall renumber those sections as sections 3-3402, 3-3403, 3-3404, 3-3405 through 3-3407, respectively.

Section 173. Sections 3-101 through 3-106, 3-108, 3-109, 3-109.1, 3-110, 3-110.1, 3-111, 3-112, 3-115, 3-118, 3-120 through 3-122, 3-204, 3-304, 3-401 through 3-420, 3-501 through 3-511, 3-601 through 3-610, 3-701, 3-812, 3-815, 3-901 through 3-906, 3-1101, 3-1102, 3-1105, 3-1208, 3-1217, 3-1502 through 3-1509, 3-1601 through 3-1603, 3-1712, 3-1713, 3-1733, 3-1910, 3-1911, 3-2101 through 3-2109, 3-2901, 3-2903, 3-2905, 3-2907, 3-2910, 3-2912, 3-2914, 3-2918, 14-418, 80-501 through 80-505, 82-804.1, 82-804.4, 82-2901 through 82-2903, 82A-302, 82A-303, 82A-305, 84-3401, 84-3409, 84-3411, and 84-3412 are repealed.

Approved March 15, 1974

## CHAPTER NO. 219

### AN ACT ESTABLISHING THE RIGHTS AND OBLIGATIONS OF LANDLORDS AND TENANTS IN SECURITY DEPOSITS.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is a new section to be numbered 42-301, R.C.M. 1947, which reads as follows:

42-301. **Definitions.** As used in this chapter:

(1) "Damage" means any and all tangible loss, injury or deterioration of a leasehold premises caused by the willful or accidental acts of the tenant occupying same or by the tenant's family, licensees or invitees, as well as any and all tangible loss, injury or deterioration resulting from the tenant's omissions or failure to perform any duty imposed upon the tenant by law with respect to the leasehold.

(2) "Leasehold premises" means the premises occupied by the tenant together with all common areas, recreational facilities, parking areas and storage facilities to which the tenant has access as well as all personal property owned or controlled by the landlord the use of which is permitted to the tenant.

(3) "Security deposit" means value given, in money or its equivalent, to secure the payment of rent by the tenant under a leasehold agreement, or to secure payment for damage to the leasehold premises. If a leasehold agreement or an agreement incident thereto requires the tenant or prospective tenant to provide or maintain in effect any deposit to the landlord for part or all of the term of the leasehold agreement, the deposit shall be presumed to be a security deposit.

Section 2. There is a new section to be numbered 42-302, R.C.M. 1947, which reads as follows:

42-302. **Application.** This chapter applies to all rentals of dwellings, including mobile homes but excluding property of public housing authorities.

Section 3. There is a new section to be numbered 42-303, R.C.M. 1947, which reads as follows:

42-303. **Security deposit — deductions authorized.** Any landlord renting property covered by this section may deduct from the security deposit a sum equal to the damage alleged to have been caused by the tenant together with a sum equal to the unpaid rent owing to the landlord at the time of such deduction and a sum for administrative and custodial expenses, which expenses shall not exceed one percent (1%) of the security deposit. No person may deduct or withhold from the security deposit any amount for purposes other than those set forth in this subsection.

Section 4. There is a new section to be numbered 42-304, R.C.M. 1947, which reads as follows:

42-304. **List of damages to leased premises.** Every landlord, within thirty (30) days subsequent to the termination of a tenancy or within thirty (30) days subsequent to a surrender and acceptance of the leasehold premises, whichever occurs first, shall provide the departing tenant with a verified written list of any damage to the leasehold premises which the landlord alleges is the responsibility of the tenant. Delivery of such list shall be accompanied by payment of the difference, if any, between the security deposit and the permitted charges set forth in section 3 [42-303].

Section 5. There is a new section to be numbered 42-305, R.C.M. 1947, which reads as follows:

42-305. **Failure to provide list of damages.** Any landlord who fails

to provide the departing tenant with a verified written list of damage as required by section 4 [42-304] shall forfeit all rights to withhold any portion of the security deposit.

Section 6. There is a new section to be numbered 42-306, R.C.M. 1947, which reads as follows:

**42-306. Wrongfully withholding security deposit — action for.** Any person who wrongfully withholds a residential property security deposit, or any portion thereof, shall be liable in damages to the tenant in a civil action for an amount equal to double the sum determined to have been wrongfully withheld or deducted, the attorney's fees may be awarded the prevailing party at the discretion of the court. The burden of proof of damages caused by the tenant to the leasehold premises shall be on the landlord. No action may be maintained by a tenant for any amount wrongfully withheld or deducted prior to:

- (1) the tenant's receipt, from the landlord or his agent, of a written denial of the sum alleged to be wrongfully detained;
- (2) the expiration of a thirty (30) day period after the termination of a tenancy; or
- (3) the expiration of a thirty (30) day period after surrender and acceptance of the leasehold premises, whichever occurs first.

Section 7. There is a new section to be numbered 42-307, R.C.M. 1947, which reads as follows:

**42-307. Failure of tenant to furnish new address.** Failure by the departing tenant to provide the landlord with his new address in writing upon termination of the tenancy or upon surrender and acceptance of the leasehold premises, whichever occurs first, shall relieve the landlord from double liability as imposed by section 6 [42-306]. Such failure shall not, however, bar the tenant from recovering the actual amount owing to him by the landlord.

Section 8. There is a new section to be numbered 42-308, R.C.M. 1947, which reads as follows:

**42-308. Condition of premises at beginning of lease — verified list — failure to furnish list to tenant.** (1) Any person engaged in the rental of property for residential purposes who requires a security deposit shall furnish to each prospective tenant, prior to execution of a lease or creation of a tenancy, a separate written statement as to the present condition of the premises intended to be let, as well as a copy of the verified written list of damage, if any, provided to the tenant of the immediately preceding leasehold agreement for the premises in question.

(2) Each written statement of the present condition of a premises intended to be let shall contain, at least, the following:

(a) a clear and concise statement of the present condition of the premises known to the landlord or his agent or which should have been known upon reasonable inspection;

(b) if the premises have never previously been let, a statement indicating such fact;

(c) if any damage to the leasehold premises resulting from the immediately preceding leasehold agreement has not been restored, a statement indicating such fact and setting forth such unrestored damage; and

(d) the signature of the landlord or his agent.

(3) Any person engaged in the rental of property for residential purposes who fails to furnish a prospective tenant, prior to the execution of the lease or creation of the tenancy, with a separate written statement of the present condition of the premises intended to be let and, if any, a verified written list of damage provided to the tenant of the immediately preceding leasehold agreement, shall be barred from recovering any sum for damage to the leasehold premises unless he can establish by clear and convincing evidence that the damage occurred during the tenancy in question and was caused by the tenant occupying the leasehold premises or the tenant's family, licensees or invitees.

Section 9. There is a new section to be numbered 42-309, R.C.M. 1947, which reads as follows:

42-309. **Waivers and contrary provisions invalid.** Any provision of a leasehold agreement, either oral or written, that is contrary to this section shall be invalid. Any attempted waiver of this section by the tenant shall be invalid.

Approved March 15, 1974

## CHAPTER NO. 220

AN ACT TO CREATE A COMMISSION WHICH MEETS FEDERAL REQUIREMENTS TO ADMINISTER STATE PLANS UNDER FEDERAL HIGHER EDUCATION PROGRAMS; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is a new section to be numbered 75-9001, R.C.M. 1947, which reads as follows:

75-9001. **Purpose.** It is the purpose of this act to promote the education and welfare of the people of this state by creating an agency, which meets the requirements of federal law, to cooperate with the federal government in the establishment and administration of programs for higher education provided for by the congress of the United States.

Section 2. There is a new section to be numbered 75-9002, R.C.M. 1947, which reads as follows:

75-9002. **Definitions.** Unless the context requires otherwise, in this act:



(1) "Commission" means the commission on federal higher education programs provided for in section 82A-512.

Section 3. There is a new section to be numbered 82A-512, R.C.M. 1947, which reads as follows:

**82A-512. Commission on federal higher education programs — creation — appointment — terms.** (1) There is a commission on federal higher education programs.

(2) The commission consists of:

(a) ex officio, the appointed members of the board of regents of higher education; and

(b) a representative of each accredited private college or university in this state appointed by the governor from the board of trustees of each private college or university. Membership on the commission by these representatives is contingent upon their continued status as trustees.

(3) The non-ex officio members shall serve for terms as provided in section 82A-112(2)(a).

(4) The chairman of the board of regents of higher education is chairman of the commission.

(5) The commissioner of higher education is the administrative officer of the commission.

(6) The commission is allocated to the board of regents of higher education for administrative purposes only as provided in section 82A-108.

(7) The commission members are entitled to compensation as provided in section 82A-112(7).

Section 4. There is a new section to be numbered 75-9003, R.C.M. 1947, which reads as follows:

**75-9003. Duties.** The commission shall:

(1) administer state plans under Title I of the federal Higher Education Facilities Act of 1963, P.L. 88-204, as amended by P.L. 89-329;

(2) administer state plans under Title VI of the federal Higher Education Act of 1965, P.L. 89-329;

(3) administer state plans under Title I of the federal Higher Education Act of 1965; and

(4) administer other state plans under federal funding and grant programs which may be assigned by the governor or the legislature except those pertaining to the duties of the superintendent of public instruction and the board of public education.

Section 5. This act shall be effective upon passage and approval.

Approved March 15, 1974

## CHAPTER NO. 221

### AN ACT ESTABLISHING A TEMPORARY COMMISSION ON LOCAL

GOVERNMENT; PROVIDING FOR AN IMMEDIATE EFFECTIVE DATE; AND PROVIDING A TERMINATION DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is a new section to be numbered 16-5116, R.C.M. 1947, which reads as follows:

16-5116. **Establishment of commission.** As authorized by article VI, section 7 of the Montana constitution, there is created a temporary commission on local government consisting of nine (9) members.

Section 2. There is a new section to be numbered 16-5117, R.C.M. 1947, which reads as follows:

16-5117. **Members of commission.** (1) The commission shall consist of eight (8) members and a chairperson appointed by the governor. No more than five (5) members shall be of any one political party.

(2) Members of the commission shall be appointed for three (3) year terms. Knowledge of local government will be a consideration in appointment of members of the commission.

(3) Vacancies in the membership of the commission shall be filled in the same manner as the original appointments.

Section 3. There is a new section to be numbered 16-5118, R.C.M. 1947, which reads as follows:

16-5118. **Purpose and responsibility of commission.** (1) The commission shall make a detailed and thorough study of local government structure, powers, services, finance and state-local relations. The commission shall prepare a revised code of local government law based on its studies and may make other recommendations for the improvement of local government.

(2) The commission may consult with and assist local government study commissions.

(3) Written reports with substantive recommendations adopted by the commission, and recommendations regarding implementing legislation, shall be made available to the governor, the members of the legislature, and to units of local government no later than December 1, 1974, and December 1, 1975.

(4) The commission may prepare and publish other reports on local government as it deems desirable.

Section 4. There is a new section to be numbered 16-5114, R.C.M. 1947, which reads as follows:

16-5114. **Commission organization and procedure.** (1) The commission shall have the power to adopt rules for its own organization and procedure.

(2) The commission shall select from its membership any additional officers it considers necessary.

(3) The commission may employ and fix the compensation and duties of necessary staff.

(4) Commission members shall be reimbursed for actual and necessary expenses incurred as commission members and shall be paid compensation as provided by law for interim standing committees.

(5) A majority of the members of the commission shall constitute a quorum for the transaction of business, and no recommendation of the commission shall have any effect unless adopted by a majority of the whole number of the members of the commission.

(6) Open meetings — hearings. All meetings of the commission shall be open to the public. The commission shall hold public hearings and may use other suitable means to disseminate information and stimulate public discussion of its purposes, progress, conclusions, and recommendations.

(7) The chairperson shall schedule meetings of the commission as deemed necessary. The chairperson shall give due notice of the time and place of the meetings to members of the commission.

(8) The commission shall maintain a written record of its proceedings and its finances which shall be open to inspection by any person at the office of the commission during regular office hours.

(9) Upon request, state agencies and units of local government shall cooperate with the commission by furnishing assistance and data to the extent possible.

(10) State, municipal and county officers and employees, at the request of the commission and with the consent of the employing agency, may be granted leave with or without pay from their agency to serve as consultants to the commission. If leave with pay is granted, they shall receive no other compensation, except mileage and per diem, from the commission.

(11) The commission may establish advisory boards and committees, including on them persons who are not members of the study commission.

(12) The commission may do any and all things as are consistent with and reasonably required to perform its function under this act.

Section 5. There is a new section to be numbered 16-5120, R.C.M. 1947, which reads as follows:

16-5120. **Commission finances.** (1) The commission may expend appropriated funds.

(2) Appropriated funds may be used to match any federal or private funds available for conducting the study and planning authorized by this act.

(3) On behalf of and for the commission, the governor shall make application for any federal funds available for the study and planning authorized by this act, and he may enter into any contracts required for receipt of federal funds with the appropriate federal agency.

Section 6. There is a new section to be numbered 16-5121, R.C.M. 1947, which reads as follows:

16-5121. **Severability clause.** If any part of this act shall be declared invalid or unconstitutional, it shall not affect the validity of any other part of this act.

Section 7. **Immediate effective date.** This act is effective on its passage and approval.

Section 8. **Automatic repealer.** This act terminates on June 30, 1977.

Approved March 15, 1974

## CHAPTER NO. 222

AN ACT PARTIALLY IMPLEMENTING ARTICLE XI, SECTIONS 3, 5, 6 AND 9 OF THE 1972 MONTANA CONSTITUTION BY PROVIDING FOR LOCAL GOVERNMENT STUDY COMMISSIONS TO STUDY AND MAKE RECOMMENDATIONS CONCERNING THE STRUCTURE AND POWERS OF UNITS OF LOCAL GOVERNMENT; AUTHORIZING A PROPERTY TAX MILL LEVY; PROVIDING FOR AN IMMEDIATE EFFECTIVE DATE; AND PROVIDING A TERMINATION DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is a new section to be numbered 16-5101, R.C.M. 1947, which reads as follows:

16-5101. **Declaration of policy and purpose.** It is the purpose of this act to partially implement article XI, sections 3, 5, 6 and 9 of the 1972 Constitution.

Section 2. There is a new section to be numbered 16-5102, R.C.M. 1947, which reads as follows:

16-5102. **Definitions.** As used in this act:

(1) "Study commission" means a local government study commission established pursuant to this act.

(2) "Unit of local government" means a county, incorporated city or incorporated town.

(3) "Study commissioners" means the elected or appointed members of the local government study commissions.

(4) "Structure" means the entire governmental organization through which a local government unit carries out its duties, functions and responsibilities.

(5) "Form" means a specific and formal governmental organization authorized as an optional form of government by law or a specific and formal governmental organization provided in a charter.

Section 3. There is a new section to be numbered 16-5103, R.C.M. 1947, which reads as follows:

**16-5103. Establishment of study commissions.** (1) Each board of county commissioners shall by resolution adopted prior to April 15, 1974 authorize a county study commission and shall determine by such resolution the number of study commissioners. The number of study commissioners shall be an odd number not less than three (3).

(2) Each municipal council or commission shall by resolution adopted prior to April 15, 1974 authorize a municipal study commission and shall determine by such resolution the number of study commissioners. The number of study commissioners shall be an odd number not less than three (3).

(3) Resolutions authorizing study commissions and determining their size shall not be the subject of referenda or initiative petitions.

(4) Study commissioners shall be elected as provided in section 7 [16-5107]. No person shall serve on more than one (1) study commission.

Section 4. There is a new section to be numbered 16-5104, R.C.M. 1947, which reads as follows:

**16-5104. Purpose of study commission.** It shall be the purpose of the study commission to study the form and power of government and existing procedures for delivery of local government services and compare them with other forms available under the laws of the state of Montana.

Section 5. There is a new section to be numbered 16-5105, R.C.M. 1947, which reads as follows:

**16-5105. Power of the study commission.** The study commission shall have the power to review the structure and power of each unit of local government represented on the study commission and shall submit one (1) alternative form of government to the qualified electors of each unit of government or combination of units of government. The study commission may submit an optional or alternative form of government provided by law or may draft a self-government charter; however, no such optional or alternative form or charter shall be submitted to the qualified electors until a specific procedure for such submission by the study commission is provided by subsequent law.

Section 6. There is a new section to be numbered 16-5106, R.C.M. 1947, which reads as follows:

**16-5106. Cooperation of study commissions.** (1) Any two (2) or more study commissions may cooperate in the conduct of their studies. A majority vote by each of the affected study commissions is required for a cooperative study.

(2) Cooperative studies do not preclude each study commission from making a separate report and recommendations.

Section 7. There is a new section to be numbered 16-5107, R.C.M. 1947, which reads as follows:

**16-5107. Election of members.** Study commissioners shall be elected in the following manner:

(1) Study commissioners shall be elected at the general election, Tuesday, November 5, 1974. There shall be placed on the ballot the names of study commission candidates who shall have been nominated in the manner provided in this section. Candidates shall be listed without party or other designation or slogan, except that candidates for county study commissions shall be listed according to position designation as provided in subsection (2) of this section. The secretary of state shall prescribe the ballot form for study commissions.

(2) Resolutions establishing study commissions shall specify the number of study commissioners to be elected. Municipal study commissioners shall be qualified electors residing within the municipality and shall be elected at large by electors of the municipality. County study commissioners shall be qualified electors and shall be elected at large by electors of the county in the following manner:

(a) three (3) study commission positions shall be filled by persons one of whom resides in each of the three (3) county commissioner districts. The positions shall be designated by district numbers one (1), two (2), and three (3) and the certificate of nomination for each candidate for such positions shall specify the position designation.

(b) if the resolution creating the study commission calls for more than three (3) members, the additional members shall be residents of the county. The additional positions shall be designated "at large positions" and the certificate of nomination for each candidate for such positions shall specify the position designation.

(3) Nominations for study commissioners shall be made by executing a certificate of nomination.

(4) The certificate shall be in writing and contain:

(a) the name of a candidate for the office to be filled;

(b) his residence address, his occupation, and his business address; and

(c) the position designation if the candidate is running for a county study commission position.

(5) For municipal study commissions, the certificate shall be signed by qualified electors residing within the municipality. For county study commissions, the certificate shall be signed by qualified electors residing within the county. Each elector shall add to his signature his place of residence.

(6) For municipal study commissions, the number of signatures shall total at least one hundred (100) or be at least one percent (1%) of the qualified electors residing within the municipality for the 1973 municipal election, whichever is less. For county study commissions, the number of signatures shall total at least one hundred (100) or be at least one percent (1%) of the qualified electors residing within the county for the 1972 general election, whichever is less.

(7) The certificate of nomination shall be filed on or before August 1, 1974. No filing fee is required. The county clerk and recorder, in the

case of county study commission candidates, and the municipal clerk, in the case of municipal study commission candidates, shall examine the source and certify to the sufficiency of the signatures thereon.

(8) Each nomination certificate shall, before it may be filed with the county clerk or municipal clerk, contain an acceptance of such nomination in writing, signed by the candidate therein nominated, upon or annexed to such certificate, or if the same person be named in more than one (1) certificate, upon or annexed to one (1) of such certificates. Such acceptance shall certify that the nominee possesses the qualifications prescribed by this act for the office designated in the certificate, that he consents to stand as a candidate at the election and that, if elected, he agrees to take office and serve.

(9) Each nominating certificate shall be verified by an oath or affirmation of one (1) or more of the signers thereof, taken and subscribed before a person qualified under the laws of Montana to administer an oath, to the effect that the petition was signed by each of the signers thereof in his proper handwriting, that the signers, to the best knowledge and belief of the affiant, possess the qualifications prescribed by section 7 [16-5107], subsection (5) of this act and that the certificate is prepared and filed in good faith for the sole purpose of endorsing the person named therein for election as stated in the petition.

(10) Votes cast for municipal and county study commissioners shall be counted, canvassed and returned by county election officials. Except as otherwise provided in this act, each election conducted under this act shall be governed by the election laws of the state of Montana. Any separate ballots or election supplies required for election of municipal study commissioners shall be furnished or paid for by the municipality.

(11) If the number of municipal study commissioners elected at the November 5, 1974 election is not equal to the number of commissioners required to be selected, the mayor with the confirmation of the municipal council or commission shall appoint, on or before November 16, 1974, the additional study commissioner or commissioners. The mayor with the confirmation of the municipal council or commission shall fill any subsequent vacancy on the municipal study commission by appointing a new commissioner. If the number of county study commissioners elected at the November 5, 1974 election is not equal to the number of commissioners required to be selected, the board of county commissioners shall appoint, on or before November 16, 1974, the additional study commissioner or commissioners. The board of county commissioners shall fill any subsequent vacancy on the county study commission by appointing a new commissioner. However, any municipal or county study commissioner appointed under this subsection shall possess the qualifications prescribed by this act for the position to which he is being appointed, and no elected official of the local government unit may be appointed.

Section 8. There is a new section to be numbered 16-5108, R.C.M. 1947, which reads as follows:

**16-5108. Term of study commission.** All study commissions shall terminate June 30, 1977.

Section 9. There is a new section to be numbered 16-5109, R.C.M. 1947, which reads as follows:

**16-5109. Organization of the study commission.** (1) Not later than ten (10) days after all study commissioners are elected or appointed the study commissioners shall meet and organize at a time which shall be set by the board of county commissioners, for the county study commission, or the mayor, for the municipal study commission.

(2) At the first meeting of the study commission, the study commission may elect a temporary chairperson who will serve until a permanent chairperson is selected.

(3) Meetings of the study commission shall be held upon the call of the chairperson, vice-chairperson in the absence or inability of the chairperson, or a majority of the study commissioners. The chairperson shall give due notice of the time and place of the meetings of the study commission.

(4) The study commission shall maintain a written record of its proceedings and its finances which shall be open to inspection by any person at the office of the study commission during regular office hours.

(5) A majority of the study commissioners shall constitute a quorum for the transaction of business, but no recommendation of a study commission shall have any legal effect unless adopted by a majority of the whole number of study commissioners.

(6) The study commission shall have the power to adopt rules for its own organization and procedure.

Section 10. There is a new section to be numbered 16-5110, R.C.M. 1947, which reads as follows:

**16-5110. Compensation of study commissioners.** Study commissioners shall receive no compensation other than for actual and necessary expenses incurred in their official capacity.

Section 11. There is a new section to be numbered 16-5111, R.C.M. 1947, which reads as follows:

**16-5111. Open meetings — hearings.** All meetings of the study commission shall be open to the public. The study commission shall hold public hearings and community forums and may use other suitable means to disseminate information and stimulate public discussion of its purposes, progress, conclusions, and recommendations.

Section 12. There is a new section to be numbered 16-5112, R.C.M. 1947, which reads as follows:

**16-5112. Administrative powers.** A study commission shall have the following administrative powers. (1) The study commission may employ and fix the compensation and duties of necessary staff. State, municipal and county officers and employees, at the request of the study commission and with the consent of the employing agency, may be granted leave with or without pay from their agency to serve as consultants to the study commission. If leave with pay is granted they shall receive no other compensation, except mileage and per diem from the study commission.



(2) The study commission may establish advisory boards and committees, including on them persons who are not study commissioners.

(3) The study commission may retain consultants.

(4) The study commission may contract and cooperate with other agencies, public or private, as it considers necessary for the rendition and affording of such services, facilities, studies, and reports to the study commission as will best assist it to carry out the purposes for which the study commission was established. Upon request of the chairperson of the study commission, state agencies, counties, and other units of local government, and the officers and employees thereof, shall furnish the commission such information as may be necessary for carrying out its function which may be available to or procurable by such agencies or units of government.

(5) The study commission may do any and all other things as are consistent with and reasonably required to perform its function under this act.

Section 13. There is a new section to be numbered 16-5113, R.C.M. 1947, which reads as follows:

16-5113. **Finances.** (1) The governing body of each local government unit shall prepare a budget to cover the expenses of the study commission for the period it is in operation during fiscal year 1975.

(2) The study commission shall prepare a budget for fiscal year 1976 and a budget for fiscal year 1977 and submit them to the local government unit's governing body for approval.

(3) Each local government unit shall accept and transfer to its study commission all funds appropriated from the state general fund for the support of the study commission.

(4) Each local government unit shall supplement the state funds available in fiscal years 1975, 1976, and 1977 by appropriating funds, providing in-kind services, or a combination of both, in a total amount not less than the available state money for each fiscal year. For that purpose, each local government unit may assess and levy, in addition to all other levies permitted by law, a special tax on each dollar of taxable valuation of the taxable property of the unit of local government. This tax may be levied in each of the fiscal years 1975, 1976, and 1977 and may be levied by a municipality in addition to the all-purpose levy provided in sections 84-4701.1, 84-4701.2, 84-4701.3, 84-4701.4, and 84-4701.5, R.C.M. 1947.

(5) All moneys received by the study commission shall be deposited with the county or municipal treasurer. The treasurer is authorized to disburse budgeted funds of the study commission on its order. Unexpended funds of the study commission shall not revert to the general fund of the local government unit at the end of the fiscal year but shall carry over to the study commission's budget for the following fiscal year. Upon termination of the study commission, unexpended funds shall revert to the general fund of the local government unit.

Section 14. There is a new section to be numbered 16-5114, R.C.M. 1947, which reads as follows:

16-5114. **Prohibition on other proceedings.** From April 15, 1974 until December 31, 1976 no other proceedings other than those commenced by a study commission for the adoption of any charter or form of government available under state law may be commenced.

Section 15. There is a new section to be numbered 16-5115, R.C.M. 1947, which reads as follows:

16-5115. **Severability clause.** If any part of this act shall be declared invalid or unconstitutional, it shall not affect the validity of any other part of this act.

Section 16. **Immediate effective date.** This act is effective on its passage and approval.

Section 17. **Automatic repealer.** This act terminates on June 30, 1977.

Approved March 15, 1974

## CHAPTER NO. 223

AN ACT PERMITTING PERSONS ENTITLED TO A CLASS EIGHT PROPERTY TAX CLASSIFICATION TO SUBMIT A MAILED, UNNOTARIZED APPLICATION FOR CLASSIFICATION TO THE DEPARTMENT OF REVENUE; AND AMENDING SECTION 84-301, R.C.M. 1947.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 84-301, R.C.M. 1947, is amended to read as follows:

"84-301. **Classification of property for taxation.** For the purpose of taxation the taxable property in the state shall be classified as follows:

Class One. The annual net proceeds of all mines and mining claims, after deducting only the expenses specified and allowed by section 84-5403; also where the right to enter upon land, to explore or prospect, or dig for oil, gas, coal or mineral is reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise or succession by any person or corporation, the surface title to which has passed to or remains in another, the state department of revenue shall determine the value of the right to enter upon said tract of land for the purpose of digging, exploring, or prospecting for gas, oil, coal or minerals, and the same shall be placed in this classification for the purpose of taxation.

Class Two. All household goods and furniture, including clocks, musical instruments, sewing machines, wearing apparel of members of the family, and all personal property actually used by the owner for personal and

domestic purposes, or for the furnishing or equipment of the family residence; all agricultural and other tools, implements and machinery, gas and other engines and boilers, threshing machines and outfits used therewith, automobiles, motor trucks and other power-driven cars, vehicles of all kinds except mobile homes, boats and all watercraft, harness, saddlery and robes and except as provided in Class Five (b) of this section, all poles, lines, transformers, transformer stations, meters, tools, improvements, machinery and other property used and owned by all persons, firms, corporations, and other organizations which are engaged in the business of furnishing telephone communications, exclusively to rural areas, or to rural areas and cities and towns provided that any such city or town has a population of eight hundred (800) persons or less; and provided further, that the average circuit miles for each station on the system is more than one and one-quarter ( $1 \frac{1}{4}$ ) miles.

Class Three. Livestock, poultry and unprocessed products of both; stocks of merchandise of all sorts, together with furniture and fixtures used therewith, except mobile homes; and all office or hotel furniture and fixtures.

Class Four. (a) All land, town and city lots, with improvements, and all trailers affixed to land owned, leased, or under contract or purchase by the trailer owner, manufacturing and mining machinery, fixtures and supplies, except as otherwise provided by the constitution of Montana, and except as such property may be included in Class Five, Class Seven or Class Eight.

(b) Mobile homes without regard to the ownership of the land upon which they are situated, except those held by a distributor or dealer of mobile homes as part of his stock in trade, and except as such property may be included in Class Eight.

Class Five. (a) All moneys and credits, secured or unsecured, including all state, county, school district and other municipal bonds, warrants and securities, without any deduction or offset; provided, however, that the terms "moneys and credits" as herein used shall not embrace the moneyed capital employed in the banking business by any banking corporation or individual in this state.

(b) All poles, lines, transformers, transformer stations, meters, tools, improvements, machinery and other property used and owned by co-operative rural electrical and co-operative rural telephone associations organized under the laws of Montana except those within the incorporated limits of a city or town in which less than ninety-five per cent (95%) of the electric consumers and/or telephone users are served by a co-operative organization, and as to the property enumerated in this sub-section (b) within incorporated limits of a city or town in which less than ninety-five per cent (95%) of the electric consumers or users will be served by a co-operative organization, such property shall be put in Class Two.

(c) All unprocessed agricultural products either on the farm or in storage, irrespective of whether said products are owned by the elevator, warehouse or flour mill owner or company storing the same, or any other person whomsoever, except all perishable fruits and vegetables in farm

storage and owned by the producer, and excepting livestock and poultry and the unprocessed products of both.

(d) The dwelling house, and the lot on which it is erected, owned and occupied by any resident of the state, who has been honorably discharged from active service in any branch of the armed forces, who is rated one hundred per cent (100%) disabled due to a service-connected disability by the United States veterans administration or its successors.

In the event of the veteran's death, the dwelling house, and the lot on which it is erected, so long as the widow remains unmarried and the owner and occupant of the property, shall remain within this classification.

Class Six. Property formerly included in this class is now classified by section 84-308, R. C. M. 1947.

Class Seven. (a) All new industrial property. New industrial property shall mean any new industrial plant, including land, buildings, machinery and fixtures which, in the determination of the state department of revenue, is used by a new industry during the first three (3) years of operation not having been assessed prior to July 1, 1961, within the state of Montana. New industry shall mean any person, corporation, firm, partnership, association, or other group which establishes a new plant or plants in this state for the operation of a new industrial endeavor, as distinguished from a mere expansion, reorganization, or merger of an existing industry or industries. Provided, however, that new industrial property shall be limited to industries that manufacture, mill, mine, produce, process or fabricate materials, or do similar work in which capital and labor are employed and in which materials unserviceable in their natural state are extracted, processed or made fit for use or are substantially altered or treated so as to create commercial products or materials; and in no event shall the term new industrial property be included to mean property used by retail or wholesale merchants, commercial services of any type, agriculture, trades or professions. And provided further, that new industrial property shall not be included to mean property which is used or employed in any industrial plant which has been in operation in this state for three (3) years or longer. Any person, corporation, firm, partnership, association or other group seeking to qualify its property for inclusion in this class shall make application to the state department of revenue in such manner and form as may be required by said department.

Class Eight. Any improvement on real property, trailers affixed to land or mobile home belonging to any person who qualifies under any one or more of the hereinafter set forth categories, valued at not more than seventeen thousand five hundred dollars (\$17,500), which is owned or under a contract for deed, and which is actually occupied by:

(1) a widow sixty-two (62) years of age or older, whether with or without minor dependent children, who qualifies under the income limitations of (4), or

(2) a widower sixty-five (65) years of age or older, whether with or without minor dependent children, who qualifies under the income limitations of (4), or

(3) a widow with minor or dependent children regardless of age, who qualifies under the income limitations of (4), or

(4) a recipient of retirement benefits whose income from all sources is not more than four thousand dollars (\$4,000) for a single person and five thousand two hundred dollars (\$5,200) for a married couple per annum. Provided, further, that one who applies for classification of property under this class must make an affidavit to the state department of revenue on a form as may be provided by the state department of revenue supplied without cost to the applicant, as to his income, if applicable, as to his retirement benefits, if applicable, or, as to his marital status, if applicable, and to the fact that he or she actually occupies such improvements with right of the county welfare board to investigate the applicant, on the completion of the form, as to answers given on the form. Provided, further, that the value of said property shall not increase during the life of the recipient of retirement benefits or widow or widower covered under this class. *For purposes of the affidavit required for classification of property under this class, it shall be sufficient if the applicant signs a statement swearing to or affirming the correctness of the information supplied, whether or not the statement is signed before a person authorized to administer oaths, and mails the application and statement to the department of revenue. This signed statement shall be treated as a statement under oath or equivalent affirmation for purposes of section 94-7-203, R.C.M. 1947, relating to the criminal offense of false swearing.*

Class Nine. All property not included in the eight (8) preceding classes."

Approved March 15, 1974

## CHAPTER NO. 224

AN ACT TO AMEND SECTION 66-809, R.C.M. 1947, TO PROVIDE COMPENSATION FOR EACH DAY AND TO INCREASE COMPENSATION WHILE IN ACTUAL ATTENDANCE FOR MEMBERS OF THE BOARD OF COSMETOLOGISTS.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 66-809, R.C.M. 1947, is amended to read as follows:

**"66-809. Compensation of members of board — deposit of receipts in state treasury.** Each member of the board shall receive, as compensation for his or her services, the sum of *twenty-five dollars (\$25) per day for each day in actual attendance at any meeting of the board.* In addition, each member shall be reimbursed for his or her expenses necessarily incurred in the performance of his or her duties hereunder. All receipts of the board shall be deposited in the state treasury to the credit of the earmarked revenue fund for the use of the state examining board of cosmetology. The secretary of the state board shall receive an annual salary to be fixed by the board, and his or her necessary expenses

actually incurred in the performance of official duties. Such secretary shall not receive, in addition to the salary herein provided, the per diem herein provided for attendance of board meetings. The state board may make reasonable provisions, for its expenses in the enforcement of this act, and for compensation and expenses of examiners."

Approved March 15, 1974

## CHAPTER NO. 225

AN ACT AMENDING SECTION 71-308, R.C.M. 1947, TO CLARIFY RESIDENCY REQUIREMENTS FOR COUNTY FINANCIAL PARTICIPATION IN ASSISTANCE TO RESIDENTS, NON-RESIDENTS, TRANSIENTS, INCOMPETENTS, AND ALIENS, TO RECODIFY COUNTY MEDICAL RESPONSIBILITIES, AND TO PAY MEDICAL EXPENSES FOR ACCIDENTAL INJURY TO INTERSTATE TRANSIENTS FROM STATE FUNDS; AND REPEALING SECTIONS 71-114, 71-116, 71-117, 71-302.1, AND 71-304, R.C.M. 1947.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is a new section to be numbered 71-302.2, R.C.M. 1947, which reads as follows:

**71-302.2. Residency requirements.** Any person otherwise qualified who makes his home in the state of Montana with the intent to become a resident shall be eligible for general relief. Upon the filing of his application in the county of residence, his assistance shall be paid entirely from state funds until he has resided for one (1) continuous year in the state of Montana, at which time he shall become a financial responsibility of the county in which he resides at the expiration of the one (1) year period. A person who leaves the state of Montana with the intent to reside in another state, and later returns to reside in the state of Montana, shall be deemed a new resident for the purposes of this act. If a recipient moves from his original county of residence to reside in another county, he shall continue to be a financial responsibility of the original county of residence for one (1) year from the date of his change of residence. If during this one (1) year period, the individual resides in several counties, he shall become a financial responsibility of the county in which he resides at the expiration of the one (1) year period. County medical assistance under section 71-308 shall not be entitled to be paid from state funds.

If a person is absent from the state voluntarily, he shall be ineligible for general relief in the state of Montana. Aliens found to be illegally within the United States shall not be eligible for relief from state funds.

Recipients of public assistance who become wards or patients in a licensed nursing home or hospital, foster home or a private charitable institution shall have the county share of financial participation paid entirely from state funds for one (1) year from the original date of entrustment

or the original date of state residency, whichever is earlier. At the expiration of such period, the appropriate county as defined by the following guidelines, shall become financially responsible to the extent of its legally required share of participation. The county in which commitment of an adult is initiated shall be deemed the county of financial responsibility except where court decree declares the residency to be otherwise. Where an adult is transferred from a facility or institution to one of the above-enumerated facilities, the county which initiated the original commitment shall be deemed the county of financial responsibility except in the case of an adult transfer from an out-of-state institution, in which case the county in which the facility is located shall be deemed the county of financial responsibility. In all cases where a minor patient or ward is involved, the county of financial responsibility shall be the county in which the parent or guardian resides. Where the custody of a minor is entrusted to a state agency, the agency shall have the power to make a reasonable declaration of the county residency of its ward using applicable guidelines enumerated in this section. A person who reaches majority in an institution shall upon release and restoration to competency, have the power to determine his own county residency. Such person shall continue to be a financial responsibility of the county which initiated the original commitment for one (1) year from the date of release, at which time he shall become a financial responsibility of his new county of residence.

Nonresidents or interstate transients may receive temporary relief from county funds in cases of extreme necessity and destitution until they may be returned at state expense to their state of residence or origin. Medical expenses arising from accidental injury to interstate transients shall be paid from county funds and reimbursed by the state upon submission of a proper claim.

Interstate transient, as the term is used in this act, is defined as an individual who has signed a declaration that he is unable to pay for his own necessities or transportation to return to his state of residence or origin and is en route to a point outside of this state, being unable, due to unexpected distress, to reach his destination.

Section 2. Section 71-308, R.C.M. 1947, is amended to read as follows:

"71-308. **Medical aid and hospitalization.** Medical aid and hospitalization for *nonresidents within the county and county residents* unable to provide such necessities for themselves are hereby declared to be the legal and financial duty and responsibility of the board of county commissioners, except as otherwise provided in other parts of this act, payable from the county poor fund. It shall be the duty of the board of county commissioners to make provisions for competent and skilled medical or surgical services as approved by the state board of health or the state medical association, or in the case of osteopathic practitioners by the state osteopathic association or chiropractors by the state chiropractic association, or optometrical services as approved by the Montana optometric association, and dental services as approved by the dental association. "Medical" or "medicine" as used in this act refers to the healing art as practiced by licensed practitioners.

The board, in arranging for medical care for those unable to provide

it for themselves, may have the care provided by the physicians appointed by such board who shall be known as county physicians or deputy county physicians, and may fix a rate of compensation for the furnishing of such medical attendance.

The board of county commissioners shall have the responsibility of making suitable arrangements to provide respectable burial for *nonresidents within the county and county residents* for whom such expenses are not otherwise available."

Section 3. Sections 71-114, 71-116, 71-117, 71-302.1, and 71-304, R.C.M. 1947, are repealed.

Approved March 15, 1974

## CHAPTER NO. 226

AN ACT FOR THE GENERAL REVISION OF THE LAWS RELATING TO THE STATE BUILDING CODE; AMENDING SECTIONS 66-2416, 66-2802, 69-2105, 69-2107, 69-2109, 69-2110, 69-2111, 69-2112, 69-2113, 69-2114, 69-2116, 69-2117, 69-2119, 69-2122, 69-2123, 69-2124, 69-2416, 69-4117, 82-1202 AND 82-1202.1; AND REPEALING SECTIONS 69-2104, 69-2106, 69-2108, 69-2115, 69-2120 AND 69-2121, R.C.M. 1947.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 69-2105, R.C.M. 1947, is amended to read as follows:

"69-2105. **Definitions.** As used in this *chapter*, unless the context *requires* otherwise:

(1) "Municipality" means any incorporated city or town and its jurisdictional area as defined by subsection (12) of this section.

(2) "Building regulations" means any law, rule, resolution, regulation, ordinance, or code, general or special, or compilation thereof enacted or adopted by the state or any municipality, including departments, boards, bureaus, commissions, or other agencies of the state or a municipality relating to the design, construction, reconstruction, alteration, conversion, repair inspection, or use of buildings and installation of equipment in buildings. The term does not include zoning ordinances.

(3) "Department" means the department of administration *provided for in title 82A, chapter 2*.

(4) "Local building department" means the agency or agencies of any municipality charged with the administration, supervision, or enforcement of building regulations, approval of plans, inspection of buildings, or the issuance of permits, licenses, certificates and similar documents, prescribed or required by state or local building regulations.



(5) "State agency" means any state officer, department, board, bureau, commission, or other agency of this state.

(6) "Building" means a combination of any materials, whether mobile, portable, or fixed to form a structure and the related facilities for the use or occupancy by persons, or property. The word "building" shall be construed as though followed by the words "or part or parts thereof."

(7) "Equipment" means plumbing, heating, electrical, ventilating, air conditioning, and refrigerating equipment, elevators, dumb-waiters, escalators, and other mechanical additions or installations.

(8) "Construction" means the original construction, and equipment of buildings, and requirements or standards relating to or affecting materials used including provisions for safety and sanitary conditions.

(9) "Owner" means the owner or owners of the premises or lesser estate, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee or other person, firm, or corporation, in control of a building.

(10) "Local legislative body" means the council or commission charged with governing the municipality.

(11) "State building code" means the state building code provided for in section 69-2111 or any portion of the code of limited application, and any of its modifications or amendments.

(12) "Municipal jurisdictional area" means the area within the limits of an incorporated municipality unless the area is extended at the written request of a municipality. Upon request the council may approve extension of the jurisdictional area to include all or part of the area within four and one-half (4 ½) miles of the corporate limits of a municipality, measured in a straight line in a horizontal plane.

(13) "Public place" means any place which a municipality or state maintains for the use of the public, or a place where the public has a right to go and be.

(14) *"Mobile home" means any dwelling unit larger than two hundred fifty-six (256) square feet in area which is either wholly or in substantial part manufactured at an off-site location and any movable or portable dwelling over thirty-two (32) feet in length and over eight (8) feet wide, constructed to be towed on its own chassis and designed without a permanent foundation for year-round occupancy, which includes one (1) or more components that can be retracted for towing purposes and subsequently expanded for additional capacity, or of two (2) or more units separately towable but designed to be joined into one (1) integral unit, as well as a portable dwelling composed of a single unit.*

(15) *"Recreational vehicle" means any movable or portable dwelling primarily designed as temporary living quarters for recreational, camping or travel use which either has its own motive power or is mounted on or drawn by another vehicle and which is less than thirty-two (32) feet in length."*

Section 2. Section 69-2107, R.C.M. 1947, is amended to read as follows:

**"69-2107. Applicable to public places outside municipalities — limitation of code.** (1) Outside municipalities and their jurisdictional area as defined by section 69-2105, subsection (12) of this *chapter*, this *chapter* applies to "public places" as defined in section 69-2105, subsection (13).

(2) Where good and sufficient cause exists, a written request for limitation of the state building code may be filed with the *department* for filing as a permanent record. The *department* may limit the application of any rule or portion of the state building code to include or exclude:

(a) specified classes or types of buildings, according to use, or other distinctions as may make differentiation or separate classification or regulation necessary, proper, or desirable;

(b) specified areas of the state based upon size, population density, special conditions prevailing therein, or other factors which make differentiation or separate classification or regulation necessary, proper, or desirable."

Section 3. Section 69-2109, R.C.M. 1947, is amended to read as follows:

**"69-2109. Duties of department.** The *department* shall *administer this chapter, and for that purpose shall:*

(1) issue orders necessary to effectuate the purposes of this act and enforce the orders by all appropriate administrative and judicial proceedings;

(2) enter, inspect, and examine buildings or premises necessary for the proper performance of *its* duties under this *chapter*;

(3) study the operation of the state building code, local building regulations, and other laws related to the construction of buildings to ascertain their effects upon the cost of building construction and the effectiveness of their provisions for health and safety;

(4) recommend tests or require the testing and approval of materials, devices, and methods of construction to ascertain their acceptability under the requirements of the state building code and issue certification of such acceptability;

(5) appoint experts, consultants, *and* technical advisers for assistance and recommendations relative to the formulation and adoption of the state building code;

(6) advise, consult, and co-operate with other agencies of the state, local governments, industries, and interested persons or groups."

Section 4. Section 69-2110, R.C.M. 1947, is amended to read as follows:

**"69-2110. Purposes of state building code.** The state building code shall be designed to effectuate the general purposes of this *chapter* and the following specific objectives and standards to:

(1) provide reasonably uniform standards and requirements for con-

struction and construction materials, consonant with accepted standards of design, engineering and fire prevention practices;

(2) permit to the fullest extent feasible, the use of modern technical methods, devices, and improvements which tend to reduce the cost of construction consistent with reasonable requirements for the health and safety of the occupants or users of buildings;

(3) eliminate restrictive, obsolete, conflicting, and unnecessary building regulations and requirements which tend to increase unnecessarily construction costs or retard unnecessarily the use of proven new materials which have been found adequate through experience or testing, or provide unwarranted preferential treatment to types or classes of materials or products or methods of construction;

(4) ensure that buildings constructed with public funds are accessible to, and functional for, physically handicapped persons where practicable and feasible."

Section 5. Section 69-2111, R.C.M. 1947, is amended to read as follows:

"69-2111. **Adoption of rules by department.** (1) The *department* shall adopt by reference nationally recognized building codes in whole or in part, amend and repeal rules relating to the construction of all buildings or classes of buildings or the installation of equipment in those buildings, and may by rule prescribe standards or requirements for materials to be used in buildings including provisions dealing with safety and sanitation. The rules, when adopted as provided in this *chapter*, constitute the "state building code" and shall be acceptable for the buildings to which it is applicable.

(2) The *department* may hold hearings relating to the administration of this act *in accordance with the Montana Administrative Procedure Act*.

(3) Except as provided in subsection (4) of this section, no rule and no amendment or repeal of the state building code shall take effect until after a public hearing by the *department*.

(4) If a hearing has been held by the *department of justice with respect to its duties contained in title 82, chapter 12, the board of plumbers, the department of health and environmental sciences*, or state electrical board on a proposed rule relating to building and equipment standards in their respective fields, a public hearing by the *department* is not required. The proposed rule is effective upon approval of the *department* and filing with the secretary of state as a part of the state building code.

(5) If a rule relating to building or equipment standards is proposed by the *department of justice with respect to its duties contained in title 82, chapter 12, board of plumbers, department of health and environmental sciences*, or state electrical board which conflicts with the state building code, the *department* shall modify the proposed rule or the state building code to resolve the conflict after consultation with the state agencies affected."

Section 6. Section 69-2113, R.C.M. 1947, is amended to read as follows:

"69-2113. **Permit necessary.** Any person who desires to construct a building which is subject to the provisions of this *chapter* must apply for a permit from the appropriate authorities."

Section 7. Section 69-2114, R.C.M. 1947, is amended to read as follows:

"69-2114. **Department's powers — variances — review.** (1) The *department* has the power on satisfactory proof, after a public hearing, to:

(a) vary or modify, in whole or part, the application of any provision or requirement of the state building code if strict compliance would cause any undue hardship; but no variance or modification shall affect adversely provisions for health, safety, and security and equally safe and proper alternatives may be prescribed therefor;

(b) reverse, modify, or annul, in whole or part, any ruling, direction, determination, or order of any state agency affecting or relating to the construction of any building, the construction of which is pursuant or purports to be pursuant to the provisions of the state building code;

(c) review within thirty (30) days after disapproval, any application for permission for the construction of a building pursuant to the provisions of the state building code, or plans or specifications submitted in connection therewith;

(d) reverse, modify, or annul the disapproval in whole or part;

(e) within thirty (30) days, make a determination that the application or plans or specifications are in compliance with the provisions of the state building code. If this determination is made, the officer charged with the duty shall issue any permit, license, certificate, authorization, or other document required for the construction.

(2) An application for a variance, modification, reversal, annulment, or review may be made by any person aggrieved pursuant to the *Montana Administrative Procedure Act*.

(a) An application for a variance, modification, reversal, annulment, or review shall stay all proceedings in furtherance of the action appealed from unless there is a showing by the state agency that a stay would involve imminent peril to life or property.

(b) The *department*, in hearings conducted under this section, shall not be bound by common-law or statutory rules of evidence."

Section 8. Section 69-2119, R.C.M. 1947, is amended to read as follows:

"69-2119. **Violation of order or codes a misdemeanor.** Any person, served with an order pursuant to the provisions of this *chapter*, who fails to comply with the order not later than thirty (30) days after service or within the time fixed by the *department* or a local building department for compliance, whichever is the greater, or any owner, builder, architect, tenant, contractor, subcontractor, construction superintendent, or their agents, or any person taking part or assisting in the construction or use

of any building who knowingly violates any of the applicable provisions of the state building code or a municipal building code is guilty of a misdemeanor."

Section 9. Section 69-2122, R.C.M. 1947, is amended to read as follows:

"69-2122. **Mobile homes — Rule-making power.** The *department* shall *make* rules embodying the fundamental principles adopted, recommended, or issued as USAS A119.1 and USAS A119.2 and amended from time to time by the United States of America Standards Institute (USASI), successor to the American Standards Association (ASA) and American National Standards applicable to mobile homes and recreational vehicles as defined in *section 69-2105*."

Section 10. Section 69-2123, R.C.M. 1947, is amended to read as follows:

"69-2123. **Compliance with the department's rules.** No person, firm or corporation may manufacture, sell, or offer for sale any mobile home or recreational vehicle, unless such mobile home or recreational vehicle, its components, systems and appliances have been constructed and assembled in accordance with the standards herein defined. Any mobile home or recreational vehicle unit which has been approved by the *department* shall be deemed to be in full compliance with the standards and rules and regulations prescribed in this *chapter*. All mobile home or recreational vehicle units thus approved shall be acceptable as meeting the requirements of this *chapter* throughout the state of Montana without further inspection or fees except for zoning, utility connections and foundation permits required by local ordinance."

Section 11. There is a new section to be numbered 82A-215, R.C.M. 1947, which reads as follows:

82A-215. Wherever the words "state building code council" or "council" appear in sections 69-2112, 69-2116, 69-2117, and 69-2124 the word "department" shall be substituted therefor.

Section 12. There is a new section to be numbered 82A-216, R.C.M. 1947, which reads as follows:

82A-216. Wherever the words "state building code council" appear in sections 66-2416, 66-2802, 69-4117, 82-1202 and 82-1202.1 the words "department of administration" shall be substituted therefor.

Section 13. The publishers of the Revised Codes of Montana 1947, are directed, under the supervision of the supreme court of Montana, to make the substitutions enumerated in sections 11 [82A-215] and 12 [82A-216] of this act, when reprinting sections or portions of sections of the Revised Codes in either supplements to or replacement volumes for the Revised Codes.

Section 14. Sections 69-2104, 69-2106, 69-2108, 69-2115, 69-2120 and 69-2121 are repealed.

Approved March 15, 1974

## CHAPTER NO. 227

AN ACT TO AMEND SECTIONS 66-2503 AND 66-2505, R.C.M. 1947,

TO AUTHORIZE THE BOARD OF MEDICAL EXAMINERS TO SET  
EXAMINATION FEES.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 66-2503, R.C.M. 1947, is amended to read as follows:

"66-2503. **Application for examination — examination fee.** Unless entitled to a license under section 66-2504 or 66-2505, a person who desires to be licensed as a physical therapist shall apply to the board, in writing, on a blank furnished by the board. He shall embody in that application evidence under oath, satisfactory to the board, of his possessing the qualifications preliminary to examination required by section 66-2502. He shall pay to the secretary of the board of medical examiners at the time of filing his application a fee *as established by the board by rule*. *Said fee shall be commensurate with the cost of the examination and its administration and shall be deposited in the earmarked revenue fund for the use of the board of medical examiners.* Anyone failing to pass the required examination shall be entitled to a second examination within six months."

Section 2. Section 66-2505, R.C.M. 1947, is amended to read as follows:

"66-2505. **Applicants licensed in another state.** The board may, in its discretion register as a physical therapist, without examination, on the payment of the required fee *as established by the board*, an applicant for license who is a physical therapist licensed under the laws of another state or territory, if the requirements for a license for physical therapists in the state or territory in which the applicant was licensed were at the date of his license substantially equal to the requirements in force in this state."

Approved March 15, 1974

## CHAPTER NO. 228

AN ACT TO AMEND SECTION 79-310, R.C.M. 1947, DIRECTING  
INVESTMENTS BY THE STATE BOARD OF INVESTMENTS TO BE  
MADE WHERE ECONOMICALLY DESIRABLE THROUGH INSTI-  
TUTIONS, CORPORATIONS OR PERSONS LICENSED TO DO  
BUSINESS IN THE STATE OF MONTANA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 79-310, R.C.M. 1947, is amended to read as follows:

"79-310. **Permissible investments.** (1) The following securities are permissible investments for all investment funds referred to in section 6 [79-309], except as indicated:

(a) any securities authorized to be pledged to secure deposits of public funds under section 4 [79-307] of this act;

(b) bonds, notes, debentures, equipment obligations, or any other kind of absolute obligation of any corporation organized and operating in any state of the United States, or in Canada if the obligations purchased are payable in United States dollars; provided that all investments under subsection (b) must be rated by one (1) nationally recognized rating agency among the top third of their quality categories, not applicable to defaulted bonds;

(c) commercial paper of prime quality, as defined by one (1) nationally recognized rating agency, issued by any corporation organized and operating in any state of the United States, provided that:

(i) such securities mature in two hundred seventy (270) days or less; and

(ii) the issuing corporation, or the parent company of a finance subsidiary issuing commercial paper, at the time of the last financial reporting period, had a ratio of current assets to current liabilities, including among current liabilities long-term debt maturing within one (1) year, of at least one and one-half ( $1\frac{1}{2}$ ) to one (1); and had received net income averaging one million dollars (\$1,000,000) or more annually for the preceding five (5) years; and

(iii) no investment may be made at any time under subsection (c) which would cause the book value of such investments in any investment fund to exceed ten percent (10%) of the book value of such fund, or would cause the commercial paper of any one corporation to exceed two percent (2%) of the book value of such fund;

(d) bankers' acceptances guaranteed by any bank having its principal office in any state of the United States and having deposits in excess of five hundred million dollars (\$500,000,000);

(e) interest-bearing deposits in banks located in the state of Montana, provided, however, that the board of investments shall require pledged securities as specified in section 79-301; interest on said deposits shall not be less than the prevailing rate of interest being paid on deposits of private funds;

(f) unencumbered real property and first mortgages on unencumbered real property, provided that:

(i) no such mortgage shall be purchased unless:

(A) the principal amount of the loan secured by the mortgage is seventy-five percent (75%) or less of the appraised value of the property; or

(B) thirty percent (30%) or more of the loan secured is guaranteed or insured in the event of default by the United States of America or an agency thereof; or

(C) the mortgagor has leased the mortgaged property to a person, firm, or corporation whose rental payments under the lease are guaranteed for the full term of the loan by an agency of the United States; and

(ii) no investment shall be made at any time under subsection (f) which would cause the book value of such investments in any investment fund to exceed fifty percent (50%) of the book value of such fund.

(2) Investments from the pooled investment fund, shall be restricted to fixed income securities described in subsections (a) to (e) above.

(3) Retirement funds, only, may be invested in preferred and common stocks of any corporation organized and operating in any state of the United States, provided that:

(a) the corporation has assets of a value not less than ten million dollars (\$10,000,000); and

(b) if the investment is preferred stock, the corporation's aggregate earnings available for payment of interest and preferred dividends, for a period of five (5) consecutive years immediately before the date of investment, have been at least one and one-half (1 ½) times the aggregate of interest and preferred dividends required to be paid during this period; and

(c) if the investment is common stock,

(i) the stock has paid cash dividends in each of at least five (5) years immediately before it is purchased; and

(ii) the aggregate earnings of the corporation during this period which were available for payment of dividends on common stock were at least equal to the aggregate of the cash dividends paid thereon; and

(iii) not more than two percent (2%) of the assets of any retirement fund may be invested in common stocks or in fixed income securities convertible into common stock not conforming to the dividend and earnings standards stated in paragraphs (i) and (ii) above, so long as the corporation maintains the asset value required in subsection (a) and evidences appropriate growth potential and probable earnings gain; and

(d) no investment may be made at any time under subsection (3) which would cause the book value of such investments in any retirement fund to exceed twenty percent (20%) of the book value of such fund, or would cause the stock of one corporation to exceed one percent (1%) of the book value of such retirement fund.

(4) *The state board of investments shall endeavor to direct the state's investment business to those investment firms, and/or banks, which maintain offices in the state and thereby make contributions to the state economy. Further, due consideration shall be given to investments which will benefit the smaller communities in the state of Montana. The state's investment business will be directed to out-of-state firms only when there is a distinct economic advantage to the state of Montana."*

Approved March 15, 1974

## CHAPTER NO. 229

AN ACT TO ALLOW A TAXPAYER A LIMITED DEDUCTION FROM  
ADJUSTED GROSS INCOME FOR POLITICAL CONTRIBUTIONS.

*Be it enacted by the Legislature of the State of Montana:*



Section 1. There is a new section to be numbered 84-4906.1, R.C.M. 1947, which reads as follows:

84-4906.1. **Definitions.** For the purposes of this act, unless the context requires otherwise: (1) "Department" means the department of revenue provided for in Title 82A, chapter 18.

(2) "Individual" means a natural person.

(3) "Political contribution" means a contribution or gift of money to:

(a) the national committee of a national political party;

(b) the state central committee of any political organization which at the last preceding election for governor polled at least three percent (3%) of the votes for governor;

(c) the county central committee of any political organization which at the last preceding election for governor polled at least three percent (3%) of the votes for governor.

Section 2. There is a new section to be numbered 84-4906.2, R.C.M. 1947, which reads as follows:

84-4906.2. **Allowance of deduction.** (1) In the case of an individual in computing net income under section 84-4906, there shall be allowed as a deduction any political contribution made by the individual within the taxable year.

(2) Limitations.

(a) Amount. The deduction under subsection (1) shall not exceed fifty dollars (\$50) or one hundred dollars (\$100) in the case of a joint return under section 84-4914.

(b) Verification. The deduction under subsection (1) shall be allowed, with respect to any political contribution, only if such political contribution is verified in a manner prescribed by the department.

Approved March 15, 1974

## CHAPTER NO. 230

AN ACT AMENDING SECTION 75-6923, R.C.M. 1947, REMOVING THE ONE HUNDRED SEVEN PERCENT (107%) LIMITATION ON THE AMOUNT SCHOOL TRUSTEES MAY PROPOSE IN A GENERAL FUND BUDGET FOR OPERATION AND MAINTENANCE OF A PUBLIC SCHOOL.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 75-6923, R.C.M. 1947, is amended to read as follows:

**"75-6923. Additional levy for general fund and election for authorization to impose.** The trustees of any district may propose to adopt a general fund budget in excess of the general fund budget amount for such district as established by the schedule in section 75-6905 for any of the following purposes:

- (1) building, altering, repairing or enlarging any schoolhouse of the district;
- (2) furnishing additional school facilities for the district;
- (3) acquisition of land for the district;
- (4) proper maintenance and operation of the school programs of the district.

However, the trustees may not adopt a total general fund budget which exceeds one hundred *twelve percent (112%)* of the general fund budget for the preceding year, unless such budget is adopted under conditions as provided in sections 75-6723 through 75-6730, or under the following conditions:

- (a) new programs which are approved under 75-6903 or existing programs which are expanded as a result of ANB increases approved under 75-6903;
- (b) federal programs which are continued with local funds if federal funds are withdrawn or withheld.

In subsection (2) (a), above, the budget may exceed *one hundred twelve percent (112%)* of the preceding year's budget by a dollar amount equal to the increase in the maximum budget without a vote resulting from the introduction of the new or expanded program and in subsection (2)(b), above, by a dollar amount not to exceed the amount received from federal sources for the preceding year. Nothing in this act shall prevent a school district from adopting a budget at least as large as the maximum budget without a vote as provided in section 75-6905, *provided, however, for the fiscal year 1975, the trustees may adopt a total general fund budget which exceeds one hundred twelve percent (112%) of the general fund budget for the preceding year if they file a notice of this increase with the superintendent of public instruction, setting forth the specific reasons for so increasing the budget.*

When the trustees of any district determine that an additional amount of financing is required for the general fund budget that is in excess of the statutory schedule amount, the trustees shall submit the proposition of an additional levy to raise such excess amount of general fund financing to the electors who are qualified, under section 75-6410, to vote upon such proposition. Such special election shall be called and conducted in the manner prescribed by this Title for school elections. The ballot for such election shall state the amount of money to be raised by additional property taxation, the approximate number of mills required to raise such money, and the purpose for which such money will be expended, and it shall be in the following format:

## PROPOSITION

Shall a levy be made in addition to the levies authorized by law in such number of mills as may be necessary to raise the sum of (state the amount to be raised by additional tax levy), and being approximately (give number) mills, for the purpose of (insert the purpose for which the additional tax levy is made)?

- ☐ FOR the additional levy.
- ☐ AGAINST the additional levy.

If the election on any additional levy for the general fund is approved by a majority vote of those electors voting at such election, the proposition shall carry and the trustees may use any portion or all of the authorized amount in adopting the preliminary general fund budget. The trustees shall certify the additional levy amount authorized by such a special election on the budget form that is submitted to the county superintendent and the county commissioners shall levy such number of mills on the taxable value of all taxable property within the district as prescribed in section 75-6926, as are required to raise the amount of such additional levy.

Authorization to levy an additional tax under the provisions of this section shall be effective for only one (1) school fiscal year and shall be authorized by a special election conducted before the first day of August of the school fiscal year for which it is effective. Only one such additional levy for the maintenance and operation of the school programs of a high school district may be imposed by a high school district in a given school fiscal year."

Approved March 16, 1974

**CHAPTER NO. 231**

AN ACT AMENDING SECTION 70-803, R.C.M. 1947, TO INCLUDE THE COMMENCEMENT OF EMINENT DOMAIN PROCEEDINGS WITHIN THE MEANING OF COMMENCE TO CONSTRUCT IN THE UTILITY SITING ACT; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 70-803, R.C.M. 1947, is amended to read as follows:

"70-803. **Definitions.** The following words, when used in this act, shall have the following meanings unless otherwise clearly apparent from the context:

- (1) the word "department" means the department of natural resources and conservation.
- (2) the word "board" means the board of natural resources and conservation.
- (3) the words "utility facility" or "facility" mean:

(a) any energy generating and conversion plant and associated facilities

(i) designed for, or capable of, generating at fifty (50) megawatts of electricity or more or any addition thereto (except pollution control facilities approved by the department of health and environmental sciences added to an existing plant) having an estimated cost in excess of two hundred fifty thousand dollars (\$250,000), or

(ii) designed for, or capable of, producing one hundred million (100,000,000) cubic feet of gas per day or more or any addition thereto having an estimated cost in excess of two hundred fifty thousand dollars (\$250,000), or

(iii) designed for, or capable of, producing fifty thousand (50,000) barrels of liquid hydrocarbon products per day or more or any addition thereto having an estimated cost in excess of two hundred fifty thousand dollars (\$250,000), or

(iv) designed for or capable of enriching uranium minerals;

(b) an electric transmission line and associated facilities of a design capacity of thirty-four and one-half (34.5) kilovolts or more, except that the following transmission lines and associated facilities shall be subject to certain exceptions under the act:

(i) a transmission line and associated facilities with a design capacity of sixty-nine (69) kilovolts or less and which will be constructed above ground for a distance of ten (10) miles or less shall not be considered a utility facility within the definitions of this act,

(ii) a transmission line and associated facilities with a design capacity of one hundred sixty-one (161) kilovolts or less and which will be constructed underground for a distance of five (5) miles or less shall not be considered a utility facility within the definitions of this act,

(iii) a transmission line or associated facilities of a design capacity of one hundred sixty-one (161) kilovolts or less which does not meet the requirements of subsections (i) and (ii) of this subsection shall be subject to the specific time review requirements for transmission lines in section 6, subsection (1) [70-806(1)] and section 7, subsection (1) [70-807(1)] of this act if the proposed length of the transmission line will not exceed thirty (30) miles,

(iv) unless specifically covered by subsections (i), (ii) or (iii) of this subsection, the construction of all transmission lines and associated facilities shall be subject to the two (2) year time requirement of section 6, subsection (1) [70-806(1)], and the six hundred (600) day requirement of section 7, subsection (1) [70-807(1)],

(v) the provisions of subsections (i) and (ii) of this subsection shall not be construed as authorizing the simultaneous construction of two (2) or more transmission lines serving the same community or customer which would, when constructed separately, come within the exceptions of subsections (i) and (ii);

(c) a gas or liquid transmission line and associated facilities designed for, or capable of, transporting gas or liquid hydrocarbon products from a gasification or liquefaction facility of the size indicated in subsections (a) (ii) and (a) (iii) of this section.

(4) the words "associated facilities" include, but are not limited to, transportation links of any kind, aqueducts, diversion dams and any other device or equipment associated with the production, or delivery of the energy form produced by a facility.

(5) the words "commence to construct" mean any clearing of land, excavation, construction, or other action that would affect the environment of the site or route of a utility facility, but do not include changes needed for temporary use of sites or routes for nonutility purposes, or uses in securing geological data, including necessary borings to ascertain foundation conditions. *The words do include the commencement of eminent domain proceedings under Title 93, chapter 99, R.C.M. 1947, for land or rights-of-way upon which a utility facility may be constructed.*

(6) the word "municipality" means any county or municipality within this state.

(7) the word "person" includes any individual, group, firm, partnership, corporation, co-operative, association, government subdivision, government agency, local government, or other organization.

(8) the words "public utility" or "utility" mean any person engaged in any aspect of the production, storage, sale, delivery or furnishing of heat, electricity, gas, or energy in any form for ultimate public use.

(9) "certificate" means the certificate of environmental compatibility and public need issued by the board and required for the construction or operation of any facility."

Section 2. This act is effective on its passage and approval.

Approved March 16, 1974

## CHAPTER NO. 232

AN ACT AMENDING SECTIONS 66-2601, 66-2602, 66-2608, 66-2609, AND 82A-1606, R.C.M. 1947; CHANGING SOME PORTIONS OF THE DEFINITION OF "WATER WELL"; CHANGING THE COMPOSITION OF THE WATER WELL CONTRACTOR'S EXAMINING BOARD; INCREASING REQUIREMENTS FOR LICENSING AS A WATER WELL CONTRACTOR; AND CHANGING BONDING PROVISIONS.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 66-2601, R.C.M. 1947, is amended to read as follows:

"66-2601. **Title of the act.** This act may be cited as the "Montana Water Well Contractor's License Act."

Section 2. Section 66-2602, R.C.M. 1947, is amended to read as follows:

"66-2602. **Purpose of the act—definitions—exemptions.** It is the legislative intent and purpose in this enactment to reduce and minimize the waste of ground water resources within this state by reasonable regulation and licensing of drillers or makers of water wells in Montana and to protect the health and general welfare by providing a means for the development of the natural resource of underground water in an orderly, sanitary and reasonable manner. The reasonable regulation and licensing of drillers or makers of water wells is hereby deemed and declared to be in the best interest of the public, and the waste of ground water resources through inefficient and/or incompetent operations of drillers or makers of such water wells is hereby prohibited. Further, for the protection of the public and for the conservation of underground water resources, it is deemed necessary that standards be set and maintained to insure that competency in the drilling and making of water wells in this state is obtained.

For the purposes of this act, "water well" means any excavation that is drilled, cored, bored, washed, driven, dug, jetted or otherwise constructed when the intended use of the same is for the location, diversion, artificial recharge, or acquisition of ground water; provided, however, that the term "water well" does not include excavations by back-hoe, or otherwise, for recovery and use of surface waters *or for the purpose of stock watering or irrigation* where the depth thereof is twenty-five (25) feet or less, *or spring development*; provided further, however, that this term does not include an excavation made for the purpose of obtaining or prospecting for oil, natural gas, minerals or products of mining or quarrying or for inserting media to repressure oil or natural gas bearing formations or for storing petroleum, natural gas or other products; for the purposes of this act, "water well contractor" and "contractor" mean any person, firm, co-partnership, association, or corporation, who shall construct a water well upon lands other than his own, for compensation.

This act shall not apply to (1) an individual who drills a water well on land which is owned or leased by him and is used by him for farming, ranching or agricultural purposes or as his place of abode, *and who obtains a permit from the board, which permit the board shall issue upon finding that the drilling is exempted under this paragraph*, or (2) to an individual who performs labor or services for a licensed water well contractor in connection with the drilling of a water well at the direction and under the personal supervision of a licensed water well contractor."

Section 3. There is a new section to be numbered 82A-1602.26, R.C.M. 1947, which reads as follows:

82A-1602.26. **Water well contractor's examining board — members — terms — oath — seal — employees.** (1) There is hereby created the water well contractor's examining board of the state of Montana.

(2) The water well contractor's examining board of the state of Mon-

tana shall be composed of five (5) voting members, consisting of one (1) technical adviser hydrogeologist appointed by the Montana bureau of mines and geology; two (2) licensed Montana water well contractors appointed by the governor with the concurrence of the senate; one (1) appointed by the director of natural resources and conservation; and (1) appointed by the director of health and environmental sciences. The members of the board shall serve for a term of three (3) years. In case of a vacancy in the office of a member of the board, an appointment shall be made to fill the same in the manner prescribed by the constitution and laws of this state. The members of the board shall have been bona fide residents of this state for a period of at least three (3) years prior to such appointment.

(3) The members of the board shall, upon entering on the duties of his office, take and subscribe to the oath specified in the constitution of the state of Montana, and such oath shall be filed in the office of the secretary of state of the state of Montana.

(4) The board shall have a seal with the words engraved thereon: "Water Well Contractor's Examining Board," and such seal shall be affixed to all writs, authentication of records, and other official proceedings of the board. The courts of this state shall take judicial notice of such seal.

(5) The board may, in its discretion, employ a secretary and such other persons as may be necessary to perform the duties of the board, either upon a part-time basis or upon a full-time basis. Each appointed member of the board who is not a government employee shall receive, as compensation for his services, the sum of twenty dollars (\$20) per day for each day actually engaged in the performance of the duties of his office, including time of travel between his home and the places at which he shall perform such duties, together with mileage and per diem expenses as provided by law. The state engineer and the director of environmental sanitation of the state board of health of the state of Montana shall receive no extra compensation for their services as members of the board.

Section 4. Section 66-2608, R.C.M. 1947, is amended to read as follows:

**"66-2608. Examination and qualifications.** Under such reasonable rules and regulations pertaining to the business of drilling and contracting for drilling of water wells as the board shall adopt, it shall have the power and it shall be its duty to investigate, by examination or otherwise, into the qualifications of applicants for licenses to drill or make wells for production therefrom of underground waters in this state. Examinations by the board may be oral or written or both. The qualifications to be required by the board hereunder are as follows: (1) Familiar knowledge of Montana ground water laws and sanitary standards for water well drilling and construction of water wells; (2) knowledge of types of water well construction; (3) knowledge of types of drilling tools and their respective uses; (4) knowledge of underground geology in its relation to well construction; (5) possession of adequate equipment by the applicant to complete satisfactory water wells under the standards to be adopted by the board for such wells; (6) financial responsibility of the applicant by compe-

tent proof of the same; (7) successful completion of an examination given by or under direction of the board; and (8) *the applicant must have completed a minimum of one (1) year apprenticeship under the direct supervision of a licensed water well contractor.*

The examinations conducted by the board shall be held at such times and places as the board may determine. Failure of an applicant to successfully complete such examination shall disqualify him from making further application for a period of six (6) months. The board shall act within a reasonable time upon all applications for licenses hereunder. Each application shall be accompanied by the initial fee, as set forth herein, and failure to successfully meet the requirements of the board shall not entitle such applicant to a refund of said fee."

Section 5. Section 66-2609, R.C.M. 1947, is amended to read as follows:

"66-2609. **Bond to be required.** The board, upon issuance of a license hereunder to any person, shall, before such person commences operations within the state of Montana, require a good and sufficient surety bond, to be approved by the board, in the penal sum of one thousand dollars (\$1,000.00), conditioned that such licensee will comply with the rules and regulations of the board and all reasonable requirements made by the board in connection with the drilling of any individual well."

Section 6. Section 82A-1606, R.C.M. 1947, is amended to read as follows:

"82A-1606. **Board within department — composition, etc.** The members of boards within the department before the effective date of this chapter continue as members for the remainder of their terms. The composition, qualifications, method of appointment, terms of office, compensation, and reimbursement of the members of the boards within the department remain as prescribed by law, except:

(1) The executive officer of the Montana state department of health, or his designee, and the administrator of the Montana state department of public welfare, or his designee, are replaced by the director of the department of health and environmental sciences, or his designee, and the director of the department of social and rehabilitation services, or his designee, respectively, on the Montana state board of examiners for nursing home administrators, renamed the board of nursing home administrators in this chapter.

(2) The appointed representative of the state board of health is replaced by the appointed representative of the department of health and environmental sciences on the board of plumbing examiners, renamed the board of plumbers in this chapter.

(3) The director of the division of environmental sanitation or a qualified member of his staff appointed by the director is replaced by the administrator of the division of environmental sciences of the department of health and environmental sciences or a qualified member of his staff appointed by the administrator on the board of certification for water and waste water operators, renamed the board of water and waste water operators in this chapter.



(4) The state engineer and the director of the division of environmental sanitation of the state board of health are replaced by the *appointee of the director* of the department of natural resources and conservation and the *appointee of the director* of the department of health and environmental sciences, respectively, on the water well contractors' examining board of the state of Montana, renamed the board of water-well contractors in this chapter."

Approved March 21, 1974

## CHAPTER NO. 233

AN ACT TO GOVERN, CONTROL AND PREVENT THE SALE, OFFERING FOR SALE, BARTER OR GIVING AWAY OF BABY CHICKENS, DUCKLINGS, OR OTHER FOWL, UNDER THREE (3) WEEKS OF AGE, OR RABBITS UNDER TWO (2) MONTHS OF AGE, AS PETS, TOYS, PREMIUMS OR NOVELTIES.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is a new section to be numbered 3-2110, R.C.M. 1947, which reads as follows:

3-2110. **Certain dealings in baby animals unlawful.** It is unlawful for any person, firm or corporation other than a hatchery, feed store, or breeder of fowl or rabbits to sell, offer for sale, barter, or give away for commercial purposes baby chickens, ducklings, or other fowl, under three (3) weeks of age, or rabbits under two (2) months of age, as pets, toys, premiums or novelties or to color, dye, stain or otherwise change the natural color of baby chickens, ducklings, or other fowl, or rabbits or to bring or transport the same into the state; provided, however, that this act shall not be construed to prohibit the sale, dyeing, staining or otherwise changing of the natural color, or display of such baby chickens, ducklings, or other fowl, or such rabbits, in proper facilities by breeders or stores engaged in the business of selling for purposes of avicultural breeding and raising.

Section 2. There is a new section to be numbered 3-2111, R.C.M. 1947, which reads as follows:

3-2111. **Penalties.** Violation of this act is a misdemeanor and any person, firm, or corporation other than a hatchery, feed store, or breeder of fowl or rabbits violating any of the provisions of this act is, upon conviction, subject to a fine not exceeding the sum of one hundred dollars (\$100) or imprisonment for a period not exceeding thirty (30) days, or both.

Approved March 21, 1974

## CHAPTER NO. 234

AN ACT TO PROVIDE FOR LICENSING AND REGULATING PRIVATE

INVESTIGATORS AND PRIVATE PATROL OPERATORS AND TO  
SAFEGUARD THE INTERESTS OF THE PUBLIC.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is a new section to be numbered 66-3301, R.C.M. 1947, which reads as follows:

66-3301. **Definitions.** As used in this act:

(1) "Director" means the director of the department of professional and occupational licensing.

(2) "Department" means the department of professional and occupational licensing.

(3) "Person" includes any individual, firm, company, association, organization, partnership, and corporation.

(4) "Licensee" means a person licensed under this act and includes, but is not limited to, private investigator and private patrol operator.

(5) "Manager" means the individual under whose direction, control, charge, or management the business of a licensee is operated.

Section 2. There is a new section to be numbered 66-3302, R.C.M. 1947, which reads as follows:

66-3302. **Duty of director.** The director shall administer and enforce the provisions of this act.

Section 3. There is a new section to be numbered 66-3303, R.C.M. 1947, which reads as follows:

66-3303. **Powers of director.** The director may adopt and enforce reasonable rules:

(1) classifying licensees according to the type of business regulated by this act in which they are engaged, including but not limited to private investigators and private patrol operators, and limiting the field and scope of the operations of a licensee to those in which he is classified and qualified to engage;

(2) fixing the qualifications of licensees, in addition to those prescribed in this act, necessary to promote and protect the public welfare; and

(3) carrying out generally the provisions of this act.

Section 4. There is a new section to be numbered 66-3304, R.C.M. 1947, which reads as follows:

66-3304. **Practice without license prohibited.** No person shall engage in a business regulated by this act unless he is licensed under this act; and no person shall falsely represent that he is employed by a licensee.

Section 5. There is a new section to be numbered 66-3305, R.C.M. 1947, which reads as follows:

**66-3305. Scope of regulated investigators.** (1) A private investigator within the meaning of this act is a person other than an insurance adjuster who, for any consideration whatsoever engages in business or accepts employment to furnish, or agrees to make, or makes, any investigation for the purpose of obtaining, information with reference to:

Crime or wrongs done or threatened against the United States of America or any state or territory of the United States of America; the identity, habits, conduct, business, occupation, honesty, integrity, credibility, knowledge, trustworthiness, efficiency, loyalty, activity, movement, whereabouts, affiliations, associations, transactions, acts, reputation, or character of any person; the location, disposition, or recovery of lost or stolen property; the cause or responsibility for fires, libels, losses, accidents, or damage or injury to persons or to property; or securing evidence to be used before any court, board, officer, or investigating committee.

(2) A private patrol operator, or operator of a private patrol service, within the meaning of this act is a person who, for any consideration whatsoever: Agrees to furnish, or furnishes, a watchman, guard, patrolman, or other person to protect persons or property or to prevent the theft, unlawful taking, loss, embezzlement, misappropriation, or concealment of any goods, wares, merchandise, money, bonds, stocks, notes, documents, papers, or property of any kind; or performs the service of such watchman, guard, patrolman, or other person, for any of said purposes.

(3) A person licensed as a private patrol operator only may not make any investigation or investigations except those that are incidental to the theft, loss, embezzlement, misappropriation, or concealment of any property, or any other thing enumerated in this section, which he has been hired or engaged to protect, guard, or watch.

Section 6. There is a new section to be numbered 66-3306, R.C.M. 1947, which reads as follows:

**66-3306. Exemptions.** This act does not apply to:

(1) a person employed exclusively and regularly by one (1) employer in connection with the affairs of such employer only and where there exists an employer-employee relationship;

(2) an officer or employee of the United States of America, or of this state or a political subdivision thereof, while such officer or employee is engaged in the performance of his official duties;

(3) a person engaged exclusively in the business of obtaining and furnishing information as to the financial rating of persons;

(4) a charitable philanthropic society or association duly incorporated under the laws of this state which is organized and maintained for the public good and not for private profit;

(5) an attorney at law in performing his duties as such attorney at law;

(6) a collection agency or an employee thereof while acting within the scope of his employment, while making an investigation incidental to the

business of the agency, including an investigation of the location of a debtor or his property where the contract with an assignor creditor is for the collection of claims owed or due or asserted to be owed or due or the equivalent thereof; or

(7) insurers and agents and insurance brokers licensed by the state, performing duties in connection with insurance transacted by them.

Section 7. There is a new section to be numbered 66-3307, R.C.M. 1947, which reads as follows:

66-3307. **License — application.** An application for a license under this act shall be on a form prescribed by the director and accompanied by the application fee provided by this act.

Section 8. There is a new section to be numbered 66-3308, R.C.M. 1947, which reads as follows:

66-3308. **Contents of application.** An application shall be verified and shall include:

- (1) the full name and business address of the applicant;
- (2) the name under which applicant intends to do business;
- (3) a statement as to the general nature of the business in which the applicant intends to engage;
- (4) a statement as to the classification or classifications under which the applicant desires to be qualified;
- (5) if the applicant is a person other than an individual, the full name and residence address of each of its partners, officers, and directors, and its manager;
- (6) two (2) recent photographs of the applicant, of a type prescribed by the director, and two (2) classifiable sets of his fingerprints;
- (7) a verified statement of his experience qualifications; and
- (8) such other information, evidence, statements, or documents as may be required by the director.

Section 9. There is a new section to be numbered 66-3309, R.C.M. 1947, which reads as follows:

66-3309. **License — criteria.** Before an application for a license is granted, the applicant or his manager, shall meet all of the following:

- (1) be at least eighteen (18) years of age;
- (2) be a citizen of the United States and a resident of the state of Montana;
- (3) be of good moral character and temperate habits; and
- (4) comply with such other qualifications concerning training, education or experience as the director may fix by rule.

Section 10. There is a new section to be numbered 66-3310, R.C.M. 1947, which reads as follows:

66-3310. **License — written examination.** The director shall require an applicant, or his manager, to demonstrate his qualifications by a written examination.

Section 11. There is a new section to be numbered 66-3311, R.C.M. 1947, which reads as follows:

66-3311. **Denial of license application — hearing.** If a license is denied, the applicant for such license, or for renewal thereof, may request a hearing within thirty (30) days after notice of denial. Such hearing shall be held in accordance with the provisions of the Montana Administrative Procedure Act and the rules of the department of professional and occupational licensing.

Section 12. There is a new section to be numbered 66-3312, R.C.M. 1947, which reads as follows:

66-3312. **Manager of a licensee.** (1) The business of each licensee shall be operated under the direction, control, charge, or management, in this state, of either the licensee or a manager, but no licensee shall be required to employ more than one (1) manager.

(2) No person shall act as a manager of a licensee until he has complied with each of the following:

(a) demonstrated his qualifications by a written examination, if required by the director; and

(b) made a satisfactory showing to the director that he has the qualifications prescribed by section 9 [66-3309].

Section 13. There is a new section to be numbered 66-3313, R.C.M. 1947, which reads as follows:

66-3313. **Temporary operation without individual licensee.** Where the individual on the basis of whose qualifications a license under this chapter has been obtained ceases to be connected with the licensee for any reason whatever, the business may be carried on for such temporary period and under such terms and conditions as the director shall provide by regulation.

Section 14. There is a new section to be numbered 66-3314, R.C.M. 1947, which reads as follows:

66-3314. **Form of license.** The license, when issued, shall be in such form as may be determined by the director and shall include:

- (1) the name of the licensee;
- (2) the name under which the licensee is to operate;
- (3) the number and date of the license.

Section 15. There is a new section to be numbered 66-3315, R.C.M. 1947, which reads as follows:

66-3315. **License — posting.** The license shall at all times be posted in a conspicuous place in the principal place of business of the licensee.

Section 16. There is a new section to be numbered 66-3316, R.C.M. 1947, which reads as follows:

**66-3316. License — identification card.** Upon the issuance of a license, a pocket card of such size, design, and content as may be determined by the director shall be issued without charge to each licensee, if an individual, or if the licensee is a person other than an individual, to its manager and to each of its officers and partners, which card shall be evidence that the licensee is duly licensed. When any person to whom a card is issued terminates his position, office or association with the licensee, the card shall be surrendered to the licensee and within five (5) days thereafter shall be mailed or delivered by the licensee to the department for cancellation.

Section 17. There is a new section to be numbered 66-3317, R.C.M. 1947, which reads as follows:

**66-3317. Change of names or addresses.** A licensee shall, within thirty (30) days after such change, notify the department of any and all changes of his address, of the name under which he does business, and of any change in its officers or partners.

Section 18. There is a new section to be numbered 66-3318, R.C.M. 1947, which reads as follows:

**66-3318. Responsibility of licensee.** A licensee shall at all times be legally responsible for the good conduct in the business of each employee, including his manager.

Section 19. There is a new section to be numbered 66-3319, R.C.M. 1947, which reads as follows:

**66-3319. Confidentiality of information.** (1) Any licensee or officer, director, partner, or manager of a licensee may divulge to any law enforcement officer or district attorney, or his representative, any information he may acquire as to any criminal offense, but he shall not divulge to any other person, except as he may be required by law so to do, any information acquired by him except at the direction of the employer or client for whom the information was obtained.

(2) No licensee or officer, director, partner, manager, or employee of a licensee shall knowingly make any false report to his employer or client for whom information was being obtained.

(3) No written report shall be submitted to a client except by the licensee, qualifying manager, or a person authorized by one (1) or either of them, and such person submitting the report shall exercise diligence in ascertaining whether or not the facts and information in such a report are true and correct.

(4) No licensee, or officer, director, partner, manager, or employee of private investigator shall use a badge in connection with the official activities of the licensee's business.

(5) No licensee, or officer, director, partner, manager, or employee of a licensee shall use a title, or wear a uniform, or use an identification

card, or make any statement with the intent to give an impression that he is connected in any way with the federal government, a state government, or any political subdivision of a state government.

(6) No licensee, or officer, director, partner, manager, or employee of a licensee shall enter any private building or portion thereof without the consent of the owner or of the person in legal possession thereof.

(7) No private patrol licensee, or officer, director, partner, manager, or employee of a private patrol licensee shall use a badge, except while engaged in guard or patrol work and while wearing a uniform.

Section 20. There is a new section to be numbered 66-3320, R.C.M. 1947, which reads as follows:

66-3320. **Employee records.** Each licensee shall maintain a record containing such information relative to his employees as may be prescribed by the director.

Section 21. There is a new section to be numbered 66-3321, R.C.M. 1947, which reads as follows:

66-3321. **Licensee advertising.** Every advertisement by a licensee soliciting or advertising business shall contain his name and address as they appear in the records of the department.

Section 22. There is a new section to be numbered 66-3322, R.C.M. 1947, which reads as follows:

66-3322. **License — surety bond.** No license shall be issued under this act unless the applicant files with the director a surety bond executed by a surety company authorized to do business in this state in the sum of two thousand dollars (\$2,000) conditioned for the faithful and honest conduct of his business by such applicant. Such bond as to its form, execution and sufficiency of the sureties shall be approved by the director.

Section 23. There is a new section to be numbered 66-3323, R.C.M. 1947, which reads as follows:

66-3323. **Bond requirements.** The bond required by this act shall be taken in the name of the people of this state and every person injured by the willful, malicious or wrongful act of the principal may bring an action on the bond in his own name to recover damages suffered by reason of such willful, malicious or wrongful act.

Section 24. There is a new section to be numbered 66-3324, R.C.M. 1947, which reads as follows:

66-3324. **Maintenance of bond.** Every licensee shall at all times maintain on file the surety bond required by this act in full force and effect and upon failure to do so the license of such licensee shall be forthwith suspended and shall not be reinstated until an application therefore, in the form prescribed by the director, is filed together with a proper bond.

The director may deny the application notwithstanding the applicant's compliance with this section:

(1) for any reason which would justify a refusal to issue or a suspension or revocation of a license; or

(2) for the performance by applicant of any practice while under suspension for failure to keep his bond in force, for which a license under this act is required.

Section 25. There is a new section to be numbered 66-3325, R.C.M. 1947, which reads as follows:

66-3325. **Cash deposit in lieu of bond.** The sum of two thousand dollars (\$2,000) in cash may be deposited with the state of Montana, in lieu of the surety bond required by section 22 [66-3322].

Section 26. There is a new section to be numbered 66-3326, R.C.M. 1947, which reads as follows:

66-3326. **Termination of bonds.** Bonds executed and filed with the department shall remain in force and effect until the surety has terminated future liability by thirty (30) day notice to the department.

Section 27. There is a new section to be numbered 66-3327, R.C.M. 1947, which reads as follows:

66-3327. **Suspension or revocation.** The director may suspend or revoke a license issued under this act if he determines that the licensee or his manager, if an individual, or if the licensee is a person other than an individual, that any of its officers, directors, partners, or its manager, has:

(1) made any false statement or given any false information in connection with an application for a license or a renewal or reinstatement of a license;

(2) violated any provisions of this act;

(3) violated any rule of the director adopted pursuant to the authority contained in this act;

(4) been convicted of a felony or any crime involving moral turpitude or illegally using, carrying, or possessing a dangerous weapon, and as a result of such conviction is under state supervision;

(5) impersonated, or permitted or aided and abetted an employee to impersonate a law enforcement officer or employee of the United States of America, or of any state or political subdivision thereof;

(6) committed or permitted any employee to commit any act, while the license was expired which would be cause for the suspension or revocation of a license, or grounds for the denial of an application for a license;

(7) willfully failed or refused to render to a client services or a report as agreed between the parties and for which compensation has been paid or tendered in accordance with the agreement of the parties; or

(8) knowingly violated, or advised, encouraged, or assisted the violation of any court order or injunction in the course of business as a licensee.

Section 28. There is a new section to be numbered 66-3328, R.C.M. 1947, which reads as follows:



66-3328. **Violation as misdemeanor.** Any person who violates any of the provisions of this act is guilty of a misdemeanor punishable by fine not to exceed five hundred dollars (\$500) or by imprisonment in the county jail not to exceed six (6) months, or by both such fine and imprisonment.

Section 29. There is a new section to be numbered 66-3329, R.C.M. 1947, which reads as follows:

66-3329. **License — expiration and renewal.** Licenses issued under this act, and the pocket cards issued pursuant thereto, shall expire at 12 midnight on June 30 of each year if not, in each instance, renewed. To renew an unexpired license, the licensee shall, on or before the date on which it would otherwise expire, apply for renewal on a form prescribed by the director, and pay the renewal fee prescribed by this act.

Section 30. There is a new section to be numbered 66-3330, R.C.M. 1947, which reads as follows:

66-3330. **Fee schedule.** The amount of fees prescribed by this act, unless otherwise fixed, is that fixed in the following schedule:

(1) An application for an original license in any classification shall be accompanied by an investigation fee of twenty-five dollars (\$25).

(2) The annual fee for an original license or renewal thereof shall be fixed by the director but shall not exceed fifty dollars (\$50).

Section 31. There is a new section to be numbered 66-3331, R.C.M. 1947, which reads as follows:

66-3331. **Severability.** It is the intent of the legislature that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid application.

Approved March 21, 1974

## CHAPTER NO. 235

AN ACT TO PLACE THE MINING OF SCORIA AND PHOSPHATE ROCK UNDER THE ADMINISTRATIVE JURISDICTION OF THE OPEN CUT MINING ACT BY AMENDING SECTIONS 50-1036, 50-1502, 50-1503, AND 50-1504, R.C.M. 1947.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 50-1036, R.C.M. 1947, is amended to read as follows:

"50-1036. **Definitions.** Unless the context requires otherwise in this act:

(1) "mineral" means coal, clay, and uranium;

(2) "overburden" means all of the earth and other materials which lie above a natural mineral deposit and also means such earth and other material after removal from their natural state in the process of strip mining;

(3) "strip mining" means any part of the process followed in the production of mineral by the open cut method including mining by the auger method or any similar method which penetrates a mineral deposit and removes mineral directly through a series of openings made by a machine which enters the deposit from a surface excavation, or any other mining method or process in which the strata or overburden is removed or displaced in order to recover the mineral;

(4) "prospecting" means the removal of overburden, core drilling, construction of roads or any other disturbance of the surface for the purpose of determining the location, quantity, or quality of a natural mineral deposit;

(5) "area of land affected" means the area of land from which overburden is to be or has been removed and upon which the overburden is to be or has been deposited and includes all lands affected by the construction of new railroad loops and roads or the improvement or use of existing railroad loops and roads to gain access and to haul the mineral;

(6) "operation" means all of the premises, facilities, railroad loops, roads, and equipment used in the process of producing and removing mineral from a designated strip mine area, or prospecting for the purpose of determining the location, quality, or quantity of a natural mineral deposit;

(7) "operator" means a person engaged in strip mining who removes or intends to remove more than ten thousand (10,000) cubic yards of mineral or overburden;

(8) "person" means a person, partnership, corporation, association, or other legal entity, or any political subdivision, or agency of the state;

(9) "method of operation" means the method or manner by which the cut or open pit is made, the overburden is placed or handled, water is controlled and other acts are performed by the operator in the process of uncovering and removing the minerals that affect the reclamation of the area of land affected;

(10) "topsoil" means the unconsolidated mineral matter naturally present on the surface of the earth that has been subjected to and influenced by genetic and environmental factors of parent material, climate, macro- and micro-organisms, and topography, all acting over a period of time, and that is necessary for the growth and regeneration of vegetation on the surface of the earth;

(11) "department" means the department of state lands provided for in Title 82A, chapter 11;

(12) "commissioner" means the commissioner of state lands provided for in section 82A-1104;

(13) "board" means the board of land commissioners provided for in article X, section 4 of the constitution of this state;

(14) "reclamation" means backfilling, grading, highwall reduction, topsoiling, planting, revegetation, and other work to restore an area of land affected by strip mining under a plan approved by the department;

(15) "degree" means from the horizontal, and in each case is subject to a tolerance of five percent (5%) error;

(16) "contour strip mining" means that strip mining method commonly carried out in areas of rough and hilly topography in which the coal or mineral seam outcrops along the side of the slope and entrance is made to the seam by excavating a bench or table cut at and along the site of the seam outcropping with the excavated overburden commonly being cast down the slope below the mineral seam and the operating bench;

(17) "bench" means the ledge, shelf, table, or terraces formed in the contour method of strip mining;

(18) "fill bench" means that portion of a bench or table which is formed by depositing overburden beyond or down slope from the cut section as formed in the contour method of strip mining;

(19) "abandoned" means an operation where no mineral is being produced and where the department determines that the operation will not continue or resume."

Section 2. Section 50-1502, R.C.M. 1947, is amended to read as follows:

"50-1502. **Policy of state.** It is the policy of this state to provide for the reclamation and conservation of land subjected to open cut bentonite, *scoria*, *phosphate rock*, sand or gravel mining. Therefore, it is the purpose of this act to preserve natural resources, to aid in the protection of wildlife and aquatic resources, to safeguard and reclaim through effective means and methods all agricultural, recreational, home and industrial sites subjected to or which may be affected by open cut bentonite, *scoria*, *phosphate rock*, sand or gravel mining to protect and perpetuate the taxable value of property, to protect scenic, scientific, historic or other unique areas, and to promote the health, safety and general welfare of the people of this state."

Section 3. Section 50-1503, R.C.M. 1947, is amended to read as follows:

"50-1503. **Contracts for reclamation of open cut mining land—enforcement of contracts.** The state board of land commissioners is hereby authorized to enter into contracts in the name of the state of Montana with operators which will provide for the reclamation of lands on which open cut mining of bentonite, *scoria*, *phosphate rock*, sand and gravel has been or is to be conducted. The state board of land commissioners is authorized to sue and be sued in the name of the state of Montana to enforce the provisions of any contract, and said board shall bring such court actions and take such other steps and actions as may be necessary to enforce the provisions of such contracts."

Section 4. Section 50-1504, R.C.M. 1947, is amended to read as follows:

"50-1504. **Definitions.** When used in this act, unless a different meaning clearly appears from the context:

(1) "Contract" means a mined land reclamation contract prepared by the commission to meet the requirements of this act.

(2) "Open cut mining" means the mining of bentonite, *scoria*, *phosphate rock*, sand or gravel by removing the overburden lying upon natural deposits thereof, and mining directly from the natural deposits thereby exposed, including the removal of overburden for the purpose of determining the location, quality or quantity of any natural deposit of bentonite, *scoria*, *phosphate rock*, sand or gravel.

(3) "Reclamation" means the reconditioning of the area of land affected by open cut mining operations to make the area suitable for productive use including but not limited to, forestry, agriculture, grazing, wildlife, recreation, residential and industrial sites.

(4) "Overburden" means all of the earth and other materials which lie above a natural deposit of bentonite, *scoria*, *phosphate rock*, sand or gravel. "Spoil" is the overburden disturbed from its natural state in the process of open cut mining.

(5) "Operator" means any person engaged in and controlling an open cut mining operation.

(6) "Affected land" means the area of land from which overburden is to be or has been removed and upon which the overburden is to be or has been deposited.

(7) "Commission" means the state board of land commissioners.

(8) "Person" means any natural person, or any firm, association, partnership, cooperative, corporation or any department, agency or instrumentality of the state or any governmental subdivision, or any other entity whatsoever.

(9) "Landowner" means the owner of land directly or indirectly affected by an open cut mining operation.

(10) "Public notice" means notice given by publication in a newspaper in the general area where the affected land is located. Such notice shall be given once a week for three (3) successive weeks.

(11) "Soils materials" are those horizons containing topsoil or other soils leached free of deleterious salts and capable of sustaining plant growth and recognized as such by standard authorities.

(12) "Refuse" means all waste material directly connected with the open cut mining operations.

(13) "Final cut" means the last pit created in an open cut mined area.

(14) "High wall" means that side of the pit adjacent to unmined land.

(15) "Reclamation plan" means the description of current land use, topographical data, water data, soils data, leased areas, intended mine areas and description of proposed reclamation of the land with appropriate maps.

(16) "Progress report" means a report showing the land which the operator has affected by open cut mining during the year. Such report shall show the number of acres of affected land and all reclamation accomplished."

Approved March 21, 1974

## CHAPTER NO. 236

AN ACT AMENDING THE MONTANA ADMINISTRATIVE PROCEDURE ACT TO REMOVE THE TIME LIMIT ON AND TO PROVIDE PROCEDURES FOR LEGISLATIVE REVIEW OF RULES; AMENDING SECTIONS 82-4203.1 AND 82-4207, R.C.M. 1947.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 82-4203.1, R.C.M. 1947, is amended to read as follows:

"82-4203.1. **Legislative review of rules.** (1) The secretary of state shall, on the date the legislature convenes in regular session in 1974, transmit to both the senate and house of representatives one (1) copy of all rules in the Montana administrative code, not including superseded or repealed rules.

(2) The secretary of state shall, on the date the legislature convenes in each regular session after 1974, transmit to both the senate and house of representatives one (1) copy of all rules, which are in the Montana administrative code, adopted or amended by agencies since the convening of the previous regular session.

(3) The legislature may, by joint resolution, repeal *any rule in the Montana administrative code*. If a rule is repealed, the legislature shall, in the joint resolution, state its objections to the repealed rule. If an agency adopts a new rule to replace the repealed rule, the agency shall adopt the new rule in accordance with the objections stated by the legislature in the joint resolution. If the legislature does not repeal a rule filed with it before the adjournment of that regular session, the rule remains valid.

(4) *The legislature may also, by joint resolution, direct a change to be made in any rule in the Montana administrative code or direct the adoption of an additional rule. If a change in any rule or the adoption of an additional rule is directed to be made, the legislature shall, in the joint resolution, state the nature of the change or the additional rule to be made, and its reasons therefor. The agency shall, in the manner provided in the*

*Montana Administrative Procedure Act, adopt a new rule in accordance with the legislative direction.*

*(5) Rules made by agencies, and changes in rules directed by the legislature, under subsection (4) of this section, shall conform and be pursuant to statutory authority."*

Section 2. Section 82-4207, R.C.M. 1947, is amended to read as follows:

"82-4207. **Petition for adoption of rules.** An interested person or, when the legislature is not in session, a member of the legislature on behalf of an interested person may petition an agency requesting the promulgation, amendment or repeal of a rule. Each agency shall prescribe by rule the form for petitions and the procedure for their submission, consideration and disposition. Within sixty (60) days after submission of a petition, the agency either shall deny the petition in writing (stating its reasons for the denial) or shall initiate rule-making proceedings in accordance with section 82-4204."

Approved March 21, 1974

## CHAPTER NO. 237

AN ACT AMENDING SECTION 71-1404, R.C.M. 1947, TO PROVIDE SUPPLEMENTARY SERVICES TO PREVENT BLINDNESS OR TO RESTORE SIGHT; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 71-1404, R.C.M. 1947, is amended to read as follows:

"71-1404. **Administration.** Except as otherwise provided by law, the state department, shall provide the services authorized by this act to blind individuals determined by the supervisor to be eligible therefor and, in carrying out the purposes of this act the department may, among other things:

(a) co-operate with other departments, agencies and institutions, both public and private, in providing the services authorized by this act to blind individuals, in studying the problems involved therein, and in establishing, developing and providing, in conformity with the purposes of this act, such programs, facilities and services as may be necessary or desirable;

(b) enter into reciprocal agreements with other states to provide the services authorized by this act to residents of the states concerned;

(c) conduct research and compile statistics relating to the provision of services to or the need of services of blind individuals;

(d) provide supplementary services to any applicant or recipient who

*is in need of treatment either to prevent blindness or to restore his eyesight whether or not he is blind, if he is otherwise qualified for services or training under this act, and if the supplementary services are recommended because of the findings of an ophthalmologist or optometric examination. The supplementary services may include necessary traveling and other expenses to receive treatment from a hospital or clinic designated by the department."*

Section 2. This act is effective on its passage and approval.

Approved March 21, 1974

## CHAPTER NO. 238

AN ACT TO AMEND SECTIONS 89-869, 89-880, 89-892 AND 89-893, R.C.M. 1947, OF THE WATER USE ACT OF 1973 TO PROVIDE FOR CLARIFICATION AND MORE EFFICIENT ADMINISTRATION OF THE ACT BY AUTHORIZING THE BOARD OF NATURAL RESOURCES AND CONSERVATION TO ADOPT RULES PROVIDING FOR INTERIM APPROVAL OF CHANGES IN APPROPRIATION RIGHTS; BY MAKING IT CLEAR THAT CONSTRUCTION MAY NOT BE COMMENCED PRIOR TO RECEIVING A PERMIT; BY PROVIDING FOR AN EXEMPTION FROM THE PERMIT REQUIREMENTS FOR ALL WELLS LESS THAN ONE HUNDRED (100) GALLONS A MINUTE; AND BY PROVIDING FOR SIMPLIFIED PROCEDURES IN APPROVING CHANGES AND TRANSFERS OF APPROPRIATION RIGHTS; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 89-869, R.C.M. 1947, is amended to read as follows:

"89-869. **Powers and duties of board.** (1) The board may prescribe fees or service charges for any public service rendered by the department under this act or under title 89, chapter 29, including fees for the filing of applications or for the issuance of permits and certificates. There shall be no fees for the filing of declarations or for the issuance of certificates of existing rights.

(2) The board may adopt rules necessary to implement and carry out the purposes and provisions of this act. These rules may include, but are not limited to, rules to:

(a) govern the issuance and terms of interim permits authorizing an applicant for a regular permit under this act to begin appropriating water immediately, pending final approval or denial by the department of the application for a regular permit;

(b) require the owner or operator of appropriation facilities to install and maintain suitable controlling and measuring devices;

(c) require the owner or operator of appropriation facilities to report

to the department the readings of measuring devices at reasonable intervals, and to file reports on appropriations;

(d) regulate the construction, use and sealing of wells to prevent the waste, contamination or pollution of groundwater; and

(e) *govern the issuance and terms of interim approval, authorizing an appropriator to change his appropriation right immediately pending final approval or denial by the department of the application for a proposed change in accordance with section 89-892.*

(3) The board shall adopt rules providing for and governing temporary emergency appropriations, without prior application for a permit, necessary to protect lives or property."

Section 2. Section 89-880, R.C.M. 1947, is amended to read as follows:

**"89-880. Right to appropriate—application for permit.** (1) After the effective date of this act, a person may not appropriate water except as provided in this act. A person may only appropriate water for a beneficial use. A right to appropriate water may not be acquired by any other method, including by adverse use, adverse possession, prescription or estoppel; the method prescribed by this act is exclusive.

(2) Except as otherwise provided in subsection (4) of this section, a person may *not appropriate water or commence construction of diversion, impoundment, withdrawal, or distribution works therefore except* by applying for and receiving a permit from the department. The application shall be made on a form prescribed by the department. The department shall make the forms available through its offices and the offices of the county clerks and recorders. The department shall return a defective application for correction or completion together with the reasons for returning it. An application does not lose priority of filing because of defects, if the application is corrected, completed and refiled with the department within thirty (30) days after its return to the applicant, or within a further time as the department may allow.

(3) A permit issued prior to a final determination of existing rights is provisional and is subject to that final determination. The amount of the appropriation granted in a provisional permit shall be reduced or modified where necessary to protect and guarantee existing rights determined in the final decree. A person may not obtain any vested right, to an appropriation obtained under a provisional permit, by virtue of construction of diversion works, purchase of equipment to apply water, planting of crops, or other action, where the permit would have been denied or modified if the final decree had been available to the department.

(4) Outside the boundaries of a controlled groundwater area, a permit is not required before appropriating groundwater by means of a well with a maximum yield of less than one hundred (100) gallons a minute. Within sixty (60) days of completion of the well, the appropriator shall file notice of completion on a form provided by the department at its offices and at the offices of the county clerks and recorders. Upon receipt of the notice, the department shall automatically issue a certificate of water right. The original of the certificate shall be sent to the county clerk and



recorder, in the county where the point of diversion or place of use is located, for recordation. The department shall keep a copy of the certificate in its office in Helena. After recordation, the clerk and recorder shall send the certificate to the appropriator. The date of filing of the notice of completion is the date of priority of the right.

(5) Persons required to file well logs and other information under the laws governing the conservation of oil and gas and who do so in compliance with those laws, shall be considered to have complied with all of the filing requirements of this act to the extent it applies to wells subject to those laws. The date of appropriation shall be the date that written notice of intention to drill is given to the board of oil and gas conservation. A person who desires to convert a nonproductive oil or gas well to a water well may do so immediately, but shall file a notice of completion or apply for a permit, depending on the maximum yield of the well, as otherwise provided in this act.

(6) A person may also appropriate water, without applying for or prior to receiving a permit, under rules adopted by the board under section 89-869 of this act."

Section 3. Section 89-892, R.C.M. 1947, is amended to read as follows:

"89-892. **Changes in appropriation rights.** (1) An appropriator may not change the place of diversion, place of use, purpose of use or place of storage without receiving prior approval of such change from the department.

(2) The department shall approve the proposed change if it determines that the proposed change will not adversely affect the rights of other persons. *If the department determines that the proposed change might adversely affect the rights of other persons, notice of the proposed change shall be given in accordance with section 89-881. If the department determines that an objection filed by a person whose rights may be affected states a valid objection to the proposed change, the department shall hold a hearing thereon prior to its approval or denial of the proposed change. Objections shall meet the requirements of section 89-882(2), and hearings shall be held in accordance with section 89-883.*"

Section 4. Section 89-893, R.C.M. 1947, is amended to read as follows:

"89-893. **Transfer of appropriation right.** (1) The right to use water under a permit or certificate of water right shall pass with a conveyance of the land, or transfer by operation of law, unless specifically exempted therefrom. All transfers of interests in appropriation rights shall be without loss of priority.

(2) *The person receiving the appropriation interest shall file with the department notice of the transfer on a form prescribed by the department.*

(3) An appropriator may not sever all or any part of an appropriation right from the land to which it is appurtenant, or sell the appropriation right for other purposes or to other lands, or make the appropriation right appurtenant to other lands, without obtaining prior approval from the department. The department shall approve the proposed change if it determines that the proposed change will not adversely affect the rights

*of other persons. If the department determines that the proposed change might adversely affect the rights of other persons, notice of the proposed change shall be given in accordance with section 89-881. If the department then determines that an objection filed by a person whose rights may be affected states a valid objection to the proposed change, the department shall hold a hearing thereon prior to its approval or denial of the proposed change. Objections shall meet the requirements of section 89-882(2) and hearings shall be held in accordance with section 89-883."*

Section 5. This act is effective on its passage and approval. The amendments made by this act apply to any application for a permit, change in appropriation right, or transfer of appropriation right, received by the department before the effective date of this act, and which has not yet been approved, granted, denied, or modified.

Approved March 21, 1974

## CHAPTER NO. 239

AN ACT TO AMEND SECTION 82-4323, R.C.M. 1947, TO PROVIDE THAT A GOVERNMENTAL ENTITY EMPLOYER MUST BE JOINED AS PARTY DEFENDANT IN CERTAIN ACTIONS; PROVIDING IMMUNITY FROM PERSONAL LIABILITY OR FROM SUIT FOR GOVERNMENTAL ENTITY EMPLOYEES IN CERTAIN CASES; PROVIDING FOR INDEMNITY IN CERTAIN CASES; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is a new section to be numbered 82-4322.1, R.C.M. 1947, which reads as follows:

82-4322.1. **Legislative purchase.** It is the purpose of this act to provide for the immunization and indemnification of public officers and employees sued for their actions, other than intentional tort or felonious acts, taken within the course and scope of their employment.

Section 2. Section 82-4323, R.C.M. 1947, is amended to read as follows:

"82-4323. **Governmental entity to be joined as defendant — employees immune from personal liability or from suit in certain cases — recovery against governmental entity bar to recovery against employee — indemnity.** (1) *In an action brought against any employee of a state, county, city, town or other governmental entity for a negligent act, error or omission, or other actionable conduct of the employee committed while acting within the course and scope of his office or employment, the governmental entity employer shall be made a party defendant to the action.*

(2) Recovery against a governmental entity under the provisions of

this act shall constitute a complete bar to any action or recovery of damages by the claimant, by reason of the same subject matter, against the employee whose negligence or wrongful act, error, or omission or other actionable conduct gave rise to the claim. *In any such action against a governmental entity, the employee whose conduct gave rise to the suit shall be immune from suit by reasons of the same subject matter, if the governmental entity acknowledges or is bound by a judicial determination that the conduct upon which the claim is brought arises out of the course and scope of such employees employment, unless the claim is based upon an intentional tort or felonious act of the employee.*

*(3) In any action in which a governmental entity employee is a party defendant, the employee shall be indemnified by the governmental entity employer for any money judgments or legal expenses to which he may be subject as a result of the suit unless the conduct upon which the claim is brought did not arise out of the course and scope of his employment or is an intentional tort or felonious act of the employee."*

Section 3. **Effective date.** This act is effective upon its passage and approval.

Approved March 21, 1974

## CHAPTER NO. 240

AN ACT AMENDING SECTION 82-4203, R.C.M. 1947, REMOVING THE REQUIREMENT OF NOTICE AND HEARING WHEN AN AGENCY ADOPTS AS A RULE A DESCRIPTION OF ITS ORGANIZATION.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 82-4203, R.C.M. 1947, is amended to read as follows:

**"82-4203. Rules describing agency organization and procedures—public inspection of rules—model rules.** (1) In addition to other rule-making requirements imposed by law, each agency shall:

(a) Adopt as a rule a description of its organization, stating the general course and method of its operations and the methods whereby the public may obtain information or make submissions or requests. *The notice and hearing requirements contained in section 82-4204 do not apply to adoption of a rule relating to a description of its organization.*

(b) Adopt rules of practice, not inconsistent with statutory provisions, setting forth the nature and requirements of all formal and informal procedures available, including a description of all forms and instructions used by the agency.

(c) Make available for public inspection all rules and all other written statements of policy or interpretations formulated, adopted or used by the agency in the discharge of its functions.

(d) Upon request of any person or agency, provide a copy of any rule. Unless otherwise provided by statute, an agency may require the payment of the cost of providing such copies.

(2) No agency rule shall be valid or effective against any person or party whose rights have been substantially prejudiced by an agency's failure to comply with the public inspection requirement herein.

(3) The attorney general shall prepare, as soon as is practicable after the passage of this act, a model form for a rule describing the organization of agencies and model rules of practice for agencies to use as a guide in fulfilling the requirements of section 82-4203 (1). The attorney general shall add to, amend or revise the model rules from time to time as he shall deem necessary for the proper guidance of agencies. The model rules, and additions, amendments or revisions thereto, shall be appropriate for the use of as many agencies as is practicable and shall be filed with the secretary of state and provided to any agency upon request. The adoption by an agency of all or part of the model rules shall not relieve the agency from following the rule-making procedures required by this act."

Approved March 21, 1974

## CHAPTER NO. 241

AN ACT TO AMEND SECTION 10-622, R.C.M. 1947, RELATING TO THE APPOINTMENT AND SALARIES OF PROBATION OFFICERS FOR THE JUVENILE DEPARTMENTS OF DISTRICT COURTS IN THE STATE OF MONTANA; AUTHORIZING SALARY INCREASES; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 10-622, R.C.M. 1947, is amended to read as follows:

**"10-622. Probation officers — appointments — removal—salaries.** In every judicial district of the state of Montana the judge thereof having jurisdiction of juvenile matters may appoint one (1) discreet person of good moral character, who shall be known as the chief probation officer of such district and who shall hold his office until removed by the court. Preference in appointment shall be given to any person who possesses the following qualifications:

(1) a bachelor's degree from an accredited college or university in the behavioral sciences, or

(2) a bachelor's degree from an accredited college or university in some subject other than the behavioral sciences, and three (3) years of experience in work of a nature related to the duties of the probation department as set forth in section 10-623.

Such officer shall receive for his services such sum as shall be specified by the court upon appointment, provided that the judge of the district

court may employ him on a yearly salary not to exceed *twelve thousand five hundred dollars (\$12,500)*, or on a per diem basis at the rate of *forty-five dollars (\$45)* per day for the time actually and necessarily employed in performing the duties of the office. The salary of such officer shall be apportioned among and paid by each of said counties in which said officer shall be appointed to act, in proportion to the assessed valuation of such counties for the year then current, except that where such official is appointed for one (1) county, his salary shall be paid by that county.

The judge having jurisdiction of juvenile matters may also appoint such additional persons giving preference to persons having the qualifications suggested for appointment as the chief probation officer to serve as deputy probation officers as the judge deems necessary; their salaries to be fixed by the judge at the time of appointment, provided that such salaries shall not exceed ninety per cent (90%) of the salary of the chief probation officer.

For all necessary travel incident to his official duties in connection with the investigation, supervision, and transportation of children, the probation officer shall, in addition to his official salary, be reimbursed for actual expenses incurred."

Section 2. This act is effective on its passage and approval.

Approved March 21, 1974

## CHAPTER NO. 242

AN ACT AUTHORIZING THE DEPARTMENT OF ADMINISTRATION TO ENTER INTO RENTAL CONTRACTS WITH OPTION TO PURCHASE FOR BUILDINGS TO BE USED BY THE STATE; AMENDING SECTION 82-1918, R.C.M. 1947, AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is a new section to be numbered 82-3315.1, R.C.M. 1947, which reads as follows:

**82-3315.1. Authority to enter into rental contract with option to purchase.** When authorized by a vote of two-thirds ( $\frac{2}{3}$ ) of the members of each house of the legislature, the department of administration shall have the authority, as part of the long range building program, to enter into a rental contract which provides an option to purchase a building to be used by the state or any department of state government.

Section 2. There is a new section to be numbered 82-3315.2, R.C.M. 1947, which reads as follows:

**82-3315.2. Location of building.** The building shall be located as determined by the terms of the call for bids. If any such contract requires the sale or lease of any interest in state lands, the contract must have prior approval of the state board of land commissioners.

Section 3. There is a new section to be numbered 82-3315.3, R.C.M. 1947, which reads as follows:

**82-3315.3. Security pledge.** To insure an adequate security provision for the lessor, the full faith and credit and taxing powers of the state of Montana are pledged in the amount necessary for the payment of rent incurred pursuant to a contract authorized by this act.

Section 4. There is a new section to be numbered 82-3315.4, R.C.M. 1947, which reads as follows:

**82-3315.4. Appointment of architect.** The department of administration may appoint an architect to draw plans and specifications for the construction of a building authorized by this act, subject to the approval of the state board of examiners.

Section 5. There is a new section to be numbered 82-3315.5, R.C.M. 1947, which reads as follows:

**82-3315.5. Contract provisions.** The rental contract shall be for a period not to exceed twenty (20) years with an option to purchase at the end of specific periods determined by the department of administration and clearly defined in the contract for each individual project. The option to purchase at the end of the contract period shall not exceed the amount of fifty thousand dollars (\$50,000). The contract shall provide for the appointment of a trustee with sufficient powers to protect the state's interest in the building and any property conveyed as a building site. The contract shall contain such other provisions as determined by the department of administration to be necessary.

Section 6. There is a new section to be numbered 82-3315.6, R.C.M. 1947, which reads as follows:

**82-3315.6. Rent payments.** Each month the department or departments occupying the building shall pay rent in an amount determined by the department of administration to be sufficient to pay the total cost of renting and maintaining the building. All rents collected shall be deposited in a separate account and are hereby appropriated for the purpose of paying the contracted rental payments and the expense of maintaining the building. At any time the amount in the account is insufficient to pay a rental payment that is due, the department of administration is authorized to transfer from the general fund an amount sufficient to make the payment.

Section 7. There is a new section to be numbered 82-3315.7, R.C.M. 1947, which reads as follows:

**82-3315.7. Awarding contract.** In awarding a contract, the department of administration shall follow the same procedures that are required for the award of a contract to construct a state-owned building. The department shall have the authority to reject any and all bids.

Section 8. There is a new section to be numbered 82-3315.8, R.C.M. 1947, which reads as follows:

**82-3315.8. Compliance with state laws and regulations.** All build-

ings built or leased or purchased under this act must comply with all laws, safety codes, rules and regulations of the state of Montana.

Section 9. Section 82-1918, R.C.M. 1947, is amended to read as follows:

"82-1918. **Contracts limited to three years — building laws.** (1) No contracts, except *as otherwise provided by law*, shall be made for a longer period than three (3) years and such contract shall provide for the delivery of such articles at such times and in such quantities as the purchasing agent may determine.

(2) All buildings built or leased or purchased under this act must comply with all laws, safety codes, rules and regulations of the state of Montana."

Section 10. This act is effective upon passage and approval.

Approved March 21, 1974

## CHAPTER NO. 243

AN ACT AMENDING SECTIONS 8-108, 8-109, 8-110 AND 8-111, R.C.M. 1947, TO FINANCE DISSEMINATION OF NOTICE OF PUBLIC HEARINGS REGARDING THE PUBLIC CONVENIENCE AND NECESSITY FOR GRANTING MOTOR CARRIER AUTHORITY; TO PROVIDE FOR THE PUBLICATION OF SUCH NOTICE IN THE LEGAL ADVERTISING SECTION OF APPROPRIATE NEWSPAPERS; AND ADDING TWO (2) NEW SECTIONS TO TITLE 8, R.C.M. 1947, TO PROVIDE FOR THE GIVING OF SUCH NOTICE TO THE MONTANA CONSUMER COUNSEL; AND TO MAKE REFERENCE TO THE AVAILABILITY OF THE MONTANA CONSUMER COUNSEL IN NOTICES OF HEARINGS.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 8-108, R.C.M. 1947, is amended to read as follows:

"8-108. **Certificate required of class A motor carriers — contents of application — fee.** (a) No class A motor carrier, as in this act defined, shall hereafter operate for the transportation of persons and/or property for hire on any public highway in this state without first having obtained from the board, under the provisions of this act, a certificate declaring that public convenience and necessity require such operation.

(b) A motor carrier making application for such certificate shall do so in writing, separately for each route, which petition shall be verified by the applicant and shall specify the following matters:

1. The name and address of the applicant and the names and addresses of its officers, if any.

2. The public highway or highways over which, and the fixed termini between which, or the regular route or routes over which it intends to operate.

3. The kind of transportation, whether passenger or freight, or both, together with a full and complete description of the character of the vehicle or vehicles to be used, including the seating capacity of any vehicle to be used for passenger traffic and the tonnage capacity of any vehicle to be used in freight traffic.

4. The proposed time schedule.

5. A schedule of the tariff or rates desired to be charged for the transportation of freight and/or passengers.

6. A complete and detailed description of the property proposed to be devoted to the public service.

7. A detailed statement showing the assets and liabilities of such applicant.

8. And such other or additional information as the board may by order require.

(c) Such application shall be accompanied by a filing fee of fifteen dollars (\$15.00) to thirty-five dollars (\$35.00) to be set by the board based on the number of counties for which the certificate is requested, *and an additional sum to be set by the board to pay the cost of publishing hearing in the legal advertising sections of an appropriate newspaper or newspapers.*"

Section 2. Section 8-109, R.C.M. 1947, is amended to read as follows:

**"8-109. Certificate required of class B motor carriers — contents of application — fee.** (a) No class B motor carrier, as in this act defined, shall hereafter operate for the transportation of persons and/or property for hire on any public highway, in this state, without first having obtained from the board, under the provisions of this act, a certificate that public convenience and necessity require such operations.

(b) A motor carrier making application for such permit shall do so in writing, separately for each locality for which consideration is desired, which petition shall be verified and shall specify the following matters:

1. Name and address of the applicant and the names and addresses of its officers, if any.

2. The kind of transportation, whether passenger or freight, or both, together with a full and complete description of the character of the vehicle or vehicles to be used, including the seating capacity of any vehicle to be used for passenger traffic and the tonnage capacity of any vehicle to be used in freight traffic.

3. The locality and character of operations to be conducted.

4. A schedule of the tariff of rates desired to be charged for the transportation of freight and/or passengers.



5. A complete and detailed description of the property proposed to be devoted to the public service.

6. A detailed statement showing the assets and liabilities of such applicant.

7. And such other or additional information as the board may by order require.

(c) Such application shall be accompanied by a filing fee of fifteen dollars (\$15.00) to thirty-five dollars (\$35.00) to be set by the board based on the number of counties for which the certificate is requested, *and an additional sum to be set by the board to pay the cost of publishing notice of hearing in the legal advertising sections of appropriate newspaper or newspapers.*"

Section 3. Section 8-110, R.C.M. 1947, is amended to read as follows:

**"8-110. Certificate required of class C motor carriers — contents of application — fee.** (1) (a) No class C motor carrier as in this act defined, except any class C motor carrier operating pursuant to the terms and conditions of a United States government contract, agency or department thereof, shall hereafter operate for the distribution, delivery, or collection of goods, wares, merchandise, or commodities, or for the transportation of persons on any public highway in this state, without first having obtained from the board, under the provisions of this act, a certificate that public convenience and necessity require such operation.

(b) A motor carrier making application for such permit shall do so in writing, separately for each route or locality for which consideration is desired, which petition shall be verified by the applicant and shall specify the following matters:

1. The name and address of the applicant and the names and addresses of its officers, if any.

2. The public highways or highways over which and the fixed termini between which, or the route or routes over which it intends to operate, if the same are fixed; or the particular city, town, station, or locality from and/or to which the applicant intends to operate.

3. The kind of transportation, the character of the goods, wares, merchandise, or commodities to be distributed, delivered or collected, together with a full and complete description of the character of the vehicle or vehicles, including the rated tonnage capacity of such vehicles, to be used in such service of distribution, delivery or collection.

4. And such other or additional information as the board may by order require.

(c) Such application shall be accompanied by a fee of fifteen dollars (\$15.00) to thirty-five dollars (\$35.00) to be set by the board based on the number of counties for which the certificate is requested, *and an additional sum to be set by the board to pay the cost of publishing notice of hearing in the legal advertising sections of an appropriate newspaper or newspapers.*

(2) The transportation for hire of any persons or commodities between any two (2) points within the state of Montana by any motor carrier pursuant to the terms of a written contract between said carrier and the United States government, agency or department thereof, shall be deemed a transportation movement subject to the provisions of the Montana Motor Carrier Act, R. C. M., 1947, 8-101 et seq., provided, however, that the presentation of the written contract to the board shall be deemed sufficient proof of public convenience and necessity in accordance with the terms and conditions contained within the United States government contract.

The class C certificate of public convenience and necessity issued pursuant to the terms and conditions of the United States government contract may be issued by the board upon receipt of an executed copy of the United States government contract. The certificate of public convenience and necessity may be issued thereafter without requiring the board to fix a time and place for public hearing.

The certificate of public convenience and necessity, issued pursuant to the terms of the United States government contract, is authorized only for the duration of the United States government contract concerned, provided, however, the certificate may be renewed for another definite term if the same motor carrier is the motor carrier authorized to operate under the United States government contract."

Section 4. Section 8-111, R.C.M. 1947, is amended to read as follows:

**"8-111. Hearing to consider applications — notice — matters considered — manner of conducting hearings.** Upon the filing of such application by a class A or class B or class C motor carrier, except a class C motor carrier authorized to operate under the terms of a United States government contract, agency or department thereof, the board shall fix a time and place for hearing thereon, which shall not be less than ten (10) days after such filing. The board shall cause a copy of such petition and notice of hearing thereon to be served upon an officer or owner of any motor carrier that in the opinion of the board might be affected by the granting of any such certificate and upon any railroad company operating into or through any town or city located on the proposed route of the applicant, and upon the state highway commission, at least ten (10) days before the date of hearing, and any such motor carrier or railroad company, and the state highway commission, and the governing board or boards of any such county, town or city into or through which such route or service as proposed may extend, and any person or corporation concerned are hereby declared to be interested parties to such proceedings, and may offer testimony for or against the granting of such certificate. *Notice of such hearing shall be published in the legal advertising section of a local newspaper or newspapers deemed by the commission to have a circulation sufficient to reach the consuming public in the area under consideration, for applications for class C authority and geographically limited class B authority, and in appropriate newspapers deemed by the commission to have sufficient statewide circulation in the case of applications for class A authority and geographically broad contemplated class B authority.* The submission of a class C motor carrier application must be accompanied by the names and addresses of any person, firm, corpora-

tion or other legal entity with whom the applicant has executed a contract for the distribution, delivery or collection of wares, merchandise or commodities, or transporting persons. Such contracts must be in writing, executed by the parties, and submitted to this commission for examination. The contracting parties must appear and offer testimony in support of the applicant. If after hearing upon application for a certificate, the board shall find, from the evidence, that public convenience and necessity require the authorization of the service proposed, or any part thereof as the board shall determine, a certificate therefor shall be issued. In determining whether or not a certificate should be issued, the board shall give reasonable consideration to the transportation service being furnished or that will be furnished by any railroad, or other existing transportation agency, and shall give due consideration to the likelihood of the proposed service being permanent and continuous throughout twelve (12) months of the year and the effect which such proposed transportation service may have upon other forms of transportation service which are essential and indispensable to the communities to be affected by such proposed transportation service or that might be affected thereby. Provided, however, that an application by a class A or a class B or a class C motor carrier for a certificate may be disallowed without a public hearing thereon when it appears from the records of the board that the route or territory sought to be served by the applicant has previously been made the basis of a public investigation and finding by the board that public convenience and necessity do not require such proposed motor carrier service unless it is made to affirmatively appear in the application by a recital of the facts that conditions obtaining over said route or in said territory and affecting transportation facilities therein have materially changed since said public investigation and finding and that public convenience and necessity do now require such motor carrier operation.

Provided further that any investigation, inquiry or hearing which the board has power to undertake or to hold, under the provisions of this act, may be undertaken or held by or before any member of the board, or by and before any agent or examiner of the board designated for the purpose by the board, and every finding, order, or decision made by a member of the board, or agent or examiner of the board so designated, together with a statement in writing of the reasons therefor which statement must be included in such finding, or order or decision, pursuant to such investigation, inquiry or hearing, when approved and confirmed by the board and ordered filed in its office, shall be, and be deemed to be the finding, order or decision of the board; provided also, that any agent or examiner of the board designated as aforesaid, shall have power to administer oaths, examine witnesses and receive evidence."

Section 5. There is a new section to be numbered 8-901, R.C.M. 1947, which reads as follows:

**8-901. Notice to be served on consumer counsel.** In addition to all other forms of notice of hearings conducted by the public service commission provided for in this title, notices of all hearings shall be served upon the Montana consumer counsel.

Section 6. There is a new section to be numbered 8-902, R.C.M. 1947, which reads as follows:

8-902. **Notice to advise public of availability of consumer counsel.** All forms of notice of public hearings conducted by the public service commission under this title, including all notices posted in public places or published in the legal advertising sections of newspapers, shall advise members of the consuming public of the existence of the office of the Montana consumer counsel and its availability to function on behalf of members of the consuming public.

Approved March 21, 1974

## CHAPTER NO. 244

AN ACT AMENDING SECTION 59-1603, R.C.M. 1947, TO PROVIDE THAT ANY AGREEMENTS INVOLVING UNION SECURITY MUST SAFEGUARD THE RIGHTS OF NONASSOCIATION OF EMPLOYEES BASED ON BONA FIDE RELIGIOUS TENETS.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 59-1603, R.C.M. 1947, is amended to read as follows:

**"59-1603. Employees' right to join or form labor organization and engage in collective bargaining activities.** (1) Public employees shall have, and shall be protected in the exercise of, the right of self-organization, to form, join or assist any labor organization, to bargain collectively through representatives of their own choosing on questions of wages, hours, fringe benefits, and other conditions of employment and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, free from interference, restraint or coercion.

(2) Public employees and their representatives shall recognize the prerogatives of public employers to operate and manage their affairs in such areas as but not limited to:

- (a) direct employees;
- (b) hire, promote, transfer, assign, and retain employees;
- (c) relieve employees from duties because of lack of work or funds or under conditions where continuation of such work be inefficient and non-productive;
- (d) maintain the efficiency of government operations;
- (e) determine the methods, means, job classifications, and personnel by which government operations are to be conducted;
- (f) take whatever actions may be necessary to carry out the missions of the agency in situations of emergency;
- (g) establish the methods and processes by which work is performed.

(3) Labor organizations designated in accordance with the provisions of this act are responsible for representing the interest of all employees in the exclusive bargaining unit without discrimination for the purposes of collective bargaining with respect to rates of pay, hours, fringe benefits, and other conditions of employment.

(4) Certification as an exclusive representative shall be extended or continued as the case may be only to a labor or employee organization the written bylaws of which provide for and guarantee the following rights and safeguards and whose practices conform to such rights and safeguards as: provisions are made for democratic organization and procedures; elections are conducted pursuant to adequate standards and safeguards; controls are provided for the regulation of officers and agents having fiduciary responsibility to the organization; and requirements exist for maintenance of sound accounting and fiscal controls including annual audits.

(5) *No public employee who is a member of a bona fide religious sect, or division thereof, the established and traditional tenets or teachings of which oppose a requirement that a member of such sect or division join or financially support any labor organization, may be required to join or financially support any labor organization as a condition of employment, if such public employee pays, in lieu of periodic union dues, initiation fees, and assessments, at the same time or times such periodic union dues, initiation fees, and assessments would otherwise be payable, a sum of money equivalent to such periodic union dues, initiation fees, and assessments, to a nonreligious, nonunion charity designated by the labor organization. Such public employee shall furnish to such labor organization written receipts evidencing such payments and failure to make such payments or furnish such receipts shall subject the employee to the same sanctions as would nonpayment of dues, initiation fees or assessments under the applicable collective bargaining agreement.*

*A public employee desiring to avail himself or herself to the right of nonassociation with a labor organization as provided in this subsection shall make written application to the chairman of the board of personnel appeals. Within ten days of the date of receipt of such application, the chairman shall appoint a committee of three (3) consisting of a clergyman not connected with the sect in question, a labor union official not directly connected with the labor organization in question and a member of the public at large, who shall be the chairman. The committee shall, within ten (10) days of the date of its appointment, meet at the locale of either the employee's residence or place of employment and, after receiving written or oral presentations from all interested parties, determine by a majority vote whether or not such public employee qualifies for the right of nonassociation with such labor organization. The committee's decision shall be made in writing within three (3) days of the meeting date and a copy thereof shall be forthwith mailed to such public employee, labor organization and the chairman of the board of personnel appeals."*

Approved March 21, 1974

## CHAPTER NO. 245

### MONTANA MODEL LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION ACT.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is a new section to be numbered 40-5801, R.C.M. 1947, which reads as follows:

40-5801. **Title.** This act shall be known and may be cited as the Montana Life and Health Insurance Guaranty Association Act.

Section 2. There is a new section to be numbered 40-5802, R.C.M. 1947, which reads as follows:

40-5802. **Purpose.** The purpose of this act is to protect policyowners, insureds, beneficiaries, annuitants, payees, and assignees of life insurance policies, health insurance policies, annuity contracts, and supplemental contracts, subject to certain limitations, against failure in the performance of contractual obligations due to the impairment of the insurer issuing such policies or contracts. To provide this protection, (1) an association of insurers is created to enable the guaranty of payment of benefits and of continuation of coverages, (2) members of the association are subject to assessment to provide funds to carry out the purpose of this act, and (3) the association is authorized to assist the commissioner, in the prescribed manner, in the detection and prevention of insurer impairments.

Section 3. There is a new section to be numbered 40-5803, R.C.M. 1947, which reads as follows:

40-5803. **Scope.** (1) This act shall apply to direct life insurance policies, health insurance policies, annuity contracts, and contracts supplemental to life and health insurance policies and annuity contracts issued by persons authorized to transact insurance in this state at any time.

(2) This act shall not apply to:

(a) any such policies or contracts, or any part of such policies or contracts, under which the risk is borne by the policyholder;

(b) any such policy or contract or part thereof assumed by the impaired insurer under a contract of reinsurance, other than reinsurance for which assumption certificates have been issued.

Section 4. There is a new section to be numbered 40-5804, R.C.M. 1947, which reads as follows:

40-5804. **Construction.** This act shall be liberally construed to effect the purpose under section 2 [40-5802] which shall constitute an aid and guide to interpretation.

Section 5. There is a new section to be numbered 40-5805, R.C.M. 1947, which reads as follows:

40-5805. **Definitions.** As used in this act:

(1) "Account" means either of the three accounts created under section 6 [40-5806].

(2) "Association" means the Montana life and health insurance guaranty association created under section 6 [40-5806].

- (2) The association shall come under the immediate supervision of the
- (3) "Commissioner" means the commissioner of insurance of this state.
- (4) "Contractual obligation" means any obligation under covered policies.
- (5) "Covered policy" means any policy or contract within the scope of this act under section 3 [40-5803].
- (6) "Impaired insurer" means
  - (a) an insurer which after the effective date of this act, becomes insolvent and is placed under a final order of liquidation, rehabilitation, or conservation by a court of competent jurisdiction, or
  - (b) an insurer deemed by the commissioner after the effective date of this act to be unable or potentially unable to fulfill its contractual obligations.
- (7) "Member insurer" means any person authorized to transact in this state any kind of insurance to which this act applies under section 3 [40-5803].
- (8) "Premiums" means direct gross insurance premiums and annuity considerations written on covered policies, less return premiums and considerations thereon and dividends paid or credited to policyholders on such direct business. "Premiums" do not include premiums and considerations on contracts between insurers and reinsurers. As used in section 9 [40-5809] "premiums" are those for the calendar year preceding the determination of impairment.
- (9) "Person" means any individual, corporation, partnership, association or voluntary organization.
- (10) "Resident" means any person who resides in this state at the time the impairment is determined and to whom contractual obligations are owed.

Section 6. There is a new section to be numbered 40-5806, R.C.M. 1947, which reads as follows:

**40-5806. Creation of the association.** (1) There is created a non-profit legal entity to be known as the Montana life and health insurance guaranty association. All member insurers shall be and remain members of the association as a condition of their authority to transact insurance in this state. The association shall perform its functions under the plan of operation established and approved under section 10 [40-5810] and shall exercise its powers through a board of directors established under section 7 [40-5807]. For purposes of administration and assessment, the association shall maintain three accounts:

- (a) the health insurance account;
- (b) the life insurance account; and
- (c) the annuity account.

commissioner and shall be subject to the applicable provisions of the insurance laws of this state.

Section 7. There is a new section to be numbered 40-5807, R.C.M. 1947, which reads as follows:

40-5807. **Board of directors.** (1) The board of directors of the association shall consist of five (5) members serving terms as established in the plan of operation. The members of the board shall be selected by member insurers subject to the approval of the commissioner. Vacancies on the board shall be filled for the remaining period of the term in the manner described in the plan of operation. To select the initial board of directors, and initially organize the association, the commissioner shall give notice to all member insurers of the time and place of the organizational meeting. In determining voting rights at the organizational meeting each member insurer shall be entitled to one (1) vote in person or by proxy. If the board of directors is not selected within sixty (60) days after notice of the organizational meeting, the commissioner may appoint the initial members.

(2) In approving selections or in appointing members to the board, the commissioner shall consider, among other things, whether all member insurers are fairly represented.

(3) Members of the board may be reimbursed from the assets of the association for expenses incurred by them as members of the board of directors but members of the board shall not otherwise be compensated by the association for their services.

Section 8. There is a new section to be numbered 40-5808, R.C.M. 1947, which reads as follows:

40-5808. **Powers and duties of the association.** In addition to the powers and duties enumerated in other sections of this act,

(1) If a domestic insurer is an impaired insurer, the association may, prior to an order of liquidation or rehabilitation, and subject to any conditions imposed by the association other than those which impair the contractual obligations of the impaired insurer, and approved by the impaired insurer and the commissioner:

(a) guarantee or reinsure, or cause to be guaranteed, assumed, or reinsured, all the covered policies of the impaired insurer;

(b) provide such monies, pledges, notes, guarantees, or other means as are proper to effectuate subsection (a), and assure payment of the contractual obligations of the impaired insurer pending action under subsection (a);

(c) loan money to the impaired insurer.

(2) If a foreign or alien insurer is an impaired insurer, the association may, prior to an order of liquidation, rehabilitation, or conservation, with respect to the covered policies of residents and subject to any conditions imposed by the association other than those which impair the contractual



obligations of the impaired insurer, and approved by the impaired insurer and the commissioner:

(a) guarantee or reinsure, or cause to be guaranteed, assumed, or reinsured, the impaired insurer's covered policies of residents;

(b) provide such monies, pledges, notes, guarantees or other means as are proper to effectuate par. (a), and assure payment of the impaired insurer's contractual obligations to residents pending action under subsection (a);

(c) loan money to the impaired insurer.

(3) If a domestic insurer is an impaired insurer under an order of liquidation or rehabilitation, the association shall, subject to the approval of the commissioner:

(a) guarantee, assume, or reinsure, or cause to be guaranteed, assumed or reinsured the covered policies of the impaired insurer;

(b) assure payment of the contractual obligations of the impaired insurer; and

(c) provide such monies, pledges, notes, guarantees, or other means as are reasonably necessary to discharge such duties.

If the association fails to act within a reasonable period of time, the commissioner shall have the powers and duties of the association under this act with respect to such domestic impaired insurer.

(4) If a foreign or alien insurer is an impaired insurer under an order of liquidation, rehabilitation, or conservation, the association shall, subject to the approval of the commissioner:

(a) guarantee, assume, or reinsure or cause to be guaranteed, assumed, or reinsured the covered policies of residents;

(b) assure payment of the contractual obligations of the impaired insurer to residents; and

(c) provide such monies, pledges, notes, guarantees, or other means as are reasonably necessary to discharge such duties.

If the association fails to act within a reasonable period of time, the commissioner shall have the powers and duties of the association under this act with respect to such foreign or alien impaired insurer.

(5) (a) In carrying out its duties under subsections (3) and (4), the association may request that there be imposed policy liens, contract liens, moratoriums on payments, or other similar means and such liens, moratoriums, or similar means may be imposed if the commissioner:

(i) finds that the amounts which can be assessed under this act are less than the amounts needed to assure full and prompt performance of the impaired insurer's contractual obligations, or that the economic or financial conditions as they affect member insurers are sufficiently adverse to render the imposition of policy or contract liens, moratoriums, or similar means to be in the public interest, and

(ii) approve the specific policy liens, contract liens, moratoriums, or similar means to be used.

(b) Before being obligated under subsections (3) and (4) the association may request that there be imposed temporary moratoriums or liens on payments of cash values and policy loans and such temporary moratoriums and liens may be imposed if they are approved by the commissioner.

(6) The association shall have no liability under this section for any covered policy of a foreign or alien insurer whose domiciliary jurisdiction or state of entry provides by statute or regulation, for residents of this state protection substantially similar to that provided by this act for residents of other states.

(7) The association may render assistance and advice to the commissioner, upon his request, concerning rehabilitation, payment of claims, continuations of coverage, or the performance of other contractual obligations of any impaired insurer.

(8) The association shall have standing to appear before any court in this state with jurisdiction over an impaired insurer concerning which the association is or may become obligated under this act. Such standing shall extend to all matters germane to the powers and duties of the association, including, but not limited to, proposals for reinsuring or guaranteeing the covered policies of the impaired insurer and the determination of the covered policies and contractual obligations.

(9) (a) Any person receiving benefits under this act shall be deemed to have assigned his rights under the covered policy to the association to the extent of the benefits received because of this act whether the benefits are payments of contractual obligations or continuation of coverage. The association may require an assignment to it of such rights by any payee, policy or contract owner, beneficiary, insured or annuitant as a condition precedent to the receipt of any rights or benefits conferred by this act upon such person. The association shall be subrogated to these rights against the assets of any impaired insurer.

(b) The subrogation rights of the association under this subsection shall have the same priority against the assets of the impaired insurer as that possessed by the person entitled to receive benefits under this act.

(10) The contractual obligations of the impaired insurer for which the association becomes or may become liable shall be as great as but no greater than the contractual obligations of the impaired insurer would have been in the absence of an impairment unless such obligations are reduced as permitted by subsection (5) but the association shall have no liability with respect to any portion of a covered policy to the extent that the death benefit coverage on any one life exceeds an aggregate of three hundred thousand dollars (\$300,000).

(11) The association may:

(a) enter into such contracts as are necessary or proper to carry out the provisions and purposes of this act;

(b) sue or be sued, including taking any legal actions necessary or proper for recovery of any unpaid assessments under section 9 [40-5809];

(c) borrow money to effect the purposes of this act. Any notes or other evidence of indebtedness of the association not in default shall be legal investments for domestic insurers and may be carried as admitted assets;

(d) employ or retain such persons as are necessary to handle the financial transactions of the association, and to perform such other functions as become necessary or proper under this act;

(e) negotiate and contract with any liquidator, rehabilitator, conservator, or ancillary receiver to carry out the powers and duties of the association;

(f) take such legal action as may be necessary to avoid payment of improper claims;

(g) exercise, for the purposes of this act and to the extent approved by the commissioner, the powers of a domestic life or health insurer, but in no case may the association issue insurance policies or annuity contracts other than those issued to perform the contractual obligations of the impaired insurer.

Section 9. There is a new section to be numbered 40-5809, R.C.M. 1947, which reads as follows:

**40-5809. Assessments.** (1) For the purpose of providing the funds necessary to carry out the powers and duties of the association, the board of directors shall assess the member insurers, separately for each account, at such times and for such amounts as the board finds necessary. The board shall collect the assessments after thirty (30) days written notice to the member insurers before payment is due.

(2) There shall be three classes of assessments, as follows:

(a) Class A assessments shall be made for the purpose of meeting administrative costs and other general expenses not related to a particular impaired insurer.

(b) Class B assessments shall be made to the extent necessary to carry out the powers and duties of the association under section 8 [40-5808] with regard to an impaired domestic insurer.

(c) Class C assessments shall be made to the extent necessary to carry out the powers and duties of the association under section 8 [40-5808] with regard to an impaired foreign or alien insurer.

(3) (a) The amount of any Class A assessment for each account shall be determined by the board. The amount of any Class B or C assessment shall be divided among the accounts in the proportion that the premiums received by the impaired insurer on the policies covered by each account bears to the premiums received by such insurer on all covered policies.

(b) Class A and Class C assessments against member insurers for each account shall be in the proportion that the premiums received on business in this state by each assessed member insurer on policies covered by each

account bears to such premiums received on business in this state by all assessed member insurers.

(c) Class B assessments for each account shall be made separately for each state in which the impaired domestic insurer was authorized to transact insurance at any time, in the proportion that the premiums received on business in such state by the impaired insurer on policies covered by such account bears to such premiums received in all such states by the impaired insurer. The assessments against member insurers shall be in the proportion that the premiums received on business in each such state by each assessed member insurer on policies covered by each account bears to such premiums received on business in each state by all assessed member insurers.

(d) Assessments for funds to meet the requirements of the association with respect to an impaired insurer shall not be made until necessary to implement the purposes of this act. Classification of assessments under subsection (2) and computation of assessments under this subsection shall be made with a reasonable degree of accuracy, recognizing that exact determinations may not always be possible.

(4) The association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. The total of all assessments upon a member insurer for each account shall not in any one (1) calendar year exceed two percent (2%) of such insurer's premiums in this state on the policies covered by the account.

(5) In the event an assessment against a member insurer is abated, or deferred, in whole or in part, because of the limitations set forth in subsection (4), the amount by which such assessment is abated or deferred, shall be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section. If the maximum assessment, together with the other assets of the association in either account, does not provide in any one (1) year in either account an amount sufficient to carry out the responsibilities of the association, the necessary additional funds shall be assessed as soon thereafter as permitted by this act.

(6) The board may, by an equitable method as established in the plan of operation, refund to member insurers, in proportion to the contribution of each insurer to that account, the amount by which the assets of the account exceed the amount the board finds is necessary to carry out during the coming year the obligations of the association with regard to that amount, including assets accruing from net realized gains and income from investments. A reasonable amount may be retained in any account to provide funds for the continuing expenses of the association and for future losses if refunds are impractical.

(7) It shall be proper for any member insurer, in determining its premium rates and policyowner dividends as to any kind of insurance within the scope of this act, to consider the amount reasonably necessary to meet its assessment obligations under this act.

(8) The association shall issue to each insurer paying an assessment under this act a certificate of contribution, in a form prescribed by the commissioner, for the amount so paid. All outstanding certificates shall be of equal dignity and priority without reference to amounts or dates of issue. A certificate of contribution may be shown by the insurer in its financial statement as an asset in such form and for such amount, if any, and period of time as the commissioner may approve.

Section 10. There is a new section to be numbered 40-5810, R.C.M. 1947, which reads as follows:

**40-5810. Plan of operation.** (1) (a) The association shall submit to the commissioner a plan of operation and any amendments thereto necessary or suitable to assure the fair, reasonable, and equitable administration of the association. The plan of operation and any amendments thereto shall become effective upon approval in writing by the commissioner.

(b) If the association fails to submit a suitable plan of operation within one hundred eighty (180) days following the effective date of this act or if at any time thereafter the association fails to submit suitable amendments to the plan, the commissioner shall, after notice and hearing, adopt and promulgate such reasonable rules as are necessary or advisable to effectuate the provisions of this act. Such rules shall continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner.

(2) All member insurers shall comply with the plan of operation.

(3) The plan of operation shall, in addition to requirements enumerated elsewhere in this act:

(a) establish procedures for handling the assets of the association;

(b) establish the amount and method of reimbursing members of the board of directors under section 7 [40-5807];

(c) establish regular places and times for meetings of the board of directors;

(d) establish procedures for records to be kept of all financial transactions of the association, its agents, and the board of directors;

(e) establish the procedures whereby selections for the board of directors will be made and submitted to the commissioner;

(f) establish any additional procedures for assessments under section 9 [40-5809];

(g) contain additional provisions necessary or proper for the execution of the powers and duties of the association.

(4) The plan of operation may provide that any or all powers and duties of the association, except those under sections 8 (11) (c) [40-5808 (11) (c)] and 9 [40-5809], are delegated to a corporation, association, or other organization which performs or will perform functions similar to those of this association, or its equivalent, in two (2) or more states. Such a corporation, association, or organization shall be reimbursed for any

payments made on behalf of the association and shall be paid for its performance of any function of the association. A delegation under this subsection shall take effect only with the approval of both the board of directors and the commissioner, and may be made only to a corporation, association, or organization which extends protection not substantially less favorable and effective than that provided by this act.

Section 11. There is a new section to be numbered 40-5811, R.C.M. 1947, which reads as follows:

**40-5811. Duties and powers of the commissioner.** (1) In addition to the duties and powers enumerated elsewhere in this act, the commissioner shall:

(a) notify the board of directors of the existence of an impaired insurer not later than three (3) days after a determination of impairment is made or he receives notice of impairment;

(b) upon request of the board of directors, provide the association with a statement of the premiums in the appropriate states for each member insurer;

(c) when an impairment is declared and the amount of the impairment is determined, serve a demand upon the impaired insurer to make good the impairment within a reasonable time. Notice to the impaired insurer shall constitute notice to its shareholders, if any. The failure of the insurer to promptly comply with such demand shall not excuse the association from the performance of its powers and duties under this act;

(d) in any liquidation or rehabilitation proceeding involving a domestic insurer, be appointed as the liquidator or rehabilitator. If a foreign or alien member insurer is subject to a liquidation proceeding in its domiciliary jurisdiction or state of entry, the commissioner shall be appointed conservator.

(2) The commissioner may suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this state of any member insurer which fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative the commissioner may levy a forfeiture on any member insurer which fails to pay an assessment when due. Such forfeiture shall not exceed five percent (5%) of the unpaid assessment per month, but no forfeiture shall be less than one hundred dollars (\$100) per month.

(3) Any action of the board of directors or the association may be appealed to the commissioner by any member insurer if such appeal is taken within thirty (30) days of the action being appealed. Any final action or order of the commissioner shall be subject to judicial review in a court of competent jurisdiction.

(4) The liquidator, rehabilitator, or conservator of any impaired insurer may notify all interested persons of the effect of this act.

Section 12. There is a new section to be numbered 40-5812, R.C.M. 1947, which reads as follows:

**40-5812. Prevention of impairments.** To aid in the detection and prevention of insurer impairments:

(1) The board of directors shall, upon majority vote, notify the commissioner of any information indicating any member insurer may be unable or potentially unable to fulfill its contractual obligations.

(2) The board of directors may, upon majority vote, request that the commissioner order an examination of any member insurer which the board in good faith believes may be unable or potentially unable to fulfill its contractual obligations. The commissioner may conduct such examination. The examination may be conducted as a national association of insurance commissioners examination or may be conducted by such persons as the commissioner designates. The cost of such examination shall be paid by the association and the examination report shall be treated as are other examination reports. In no event shall such examination report be released to the board of directors of the association prior to its release to the public, but this shall not excuse the commissioner from his obligation to comply with subsection (3). The commissioner shall notify the board of directors when the examination is completed. The request for an examination shall be kept on file by the commissioner but it shall not be open to public inspection prior to the release of the examination report to the public and shall be released at that time only if the examination discloses that the examined insurer is unable or potentially unable to meet its contractual obligations.

(3) The commissioner shall report to the board of directors when he has reasonable cause to believe that any member insurer examined at the request of the board of directors may be unable or potentially unable to fulfill its contractual obligations.

(4) The board of directors may, upon majority vote, make reports and recommendations to the commissioner upon any matter germane to the solvency, liquidation, rehabilitation or conservation of any member insurer. Such reports and recommendations shall not be considered public documents.

(5) The board of directors may, upon majority vote, make recommendations to the commissioner for the detection and prevention of insurer impairments.

(6) The board of directors shall, at the conclusion of any insurer impairment in which the association carried out its duties under this act or exercised any of its powers under this act, prepare a report on the history and causes of such impairment, based on the information available to the association, and submit such report to the commissioner.

Section 13. There is a new section to be numbered 40-5813, R.C.M. 1947, which reads as follows:

**40-5813. Appointment of association nominee.** The association may recommend a natural person to serve as a special deputy to act for the commissioner and under his supervision in the liquidation, rehabilitation, or conservation, of any member insurer.

Section 14. There is a new section to be numbered 40-5814, R.C.M. 1947, which reads as follows:

40-5814. **Miscellaneous provisions.** (1) Nothing in this act shall be construed to reduce the liability for unpaid assessments of the insureds of an impaired insurer operating under a plan with assessment liability.

(2) Records shall be kept of all negotiations and meetings in which the association or its representatives are involved to discuss the activities of the association in carrying out its powers and duties under section 8 [40-5808]. Records of such negotiations or meetings shall be made public only upon the termination of a liquidation, rehabilitation, or conservation proceeding involving the impaired insurer, upon the termination of the impairment of the insurer, or upon the order of a court of competent jurisdiction. Nothing in this subsection shall limit the duty of the association to render a report of its activities under section 15 [40-5815].

(3) For the purpose of carrying out its obligations under this act, the association shall be deemed to be a creditor of the impaired insurer to the extent of assets attributable to covered policies reduced by any amounts to which the association is entitled as subrogee pursuant to section 8(9) [40-5808(9)]. All assets of the impaired insurer attributable to covered policies shall be used to continue all covered policies and pay all contractual obligations of the impaired insurer as required by this act. Assets attributable to covered policies, as used in this subsection, is that proportion of the assets which the reserves that should have been established for such policies bear to the reserve that should have been established for all policies of insurance written by the impaired insurer.

(4) (a) Prior to the termination of any liquidation, rehabilitation, or conservation proceeding, the court may take into consideration the contributions of the respective parties, including the association, the shareholders and policyowners of the impaired insurer, and any other party with a bona fide interest, in making an equitable distribution of the ownership rights of such impaired insurer. In such a determination, consideration shall be given to the welfare of the policyholders of the continuing or successor insurer.

(b) No distribution to stockholders, if any, of an impaired insurer shall be made until and unless the total amount of assessments levied by the association with respect to such insurer have been fully recovered by the association.

(5) It shall be a prohibited unfair trade practice for any person to make use in any manner of the protection afforded by this act in the sale of insurance.

(6) (a) If an order for liquidation or rehabilitation of an insurer domiciled in this state has been entered, the receiver appointed under such order shall have a right to recover on behalf of the insurer, from any affiliate that controlled it, the amount of distributions, other than stock dividends paid by the insurer on its capital stock, made at any time during the five years preceding the petition for liquidation or rehabilitation subject to the limitations of paragraphs (b) to (d).

(b) No such dividend shall be recoverable if the insurer shows that when paid the distribution was lawful and reasonable, and that the insurer did not know and could not reasonably have known that the



distribution might adversely affect the ability of the insurer to fulfill its contractual obligations.

(c) Any person who as an affiliate that controlled the insurer at the time the distributions were paid shall be liable up to the amount of distributions he received. Any person who was an affiliate that controlled the insurer at the time the distributions were declared, shall be liable up to the amount of distributions he would have received if they had been paid immediately. If two persons are liable with respect to the same distributions, they shall be jointly and severally liable.

(d) The maximum amount recoverable under this subsection shall be the amount needed in excess of all other available assets of the impaired insurer to pay the contractual obligations of the impaired insurer.

(e) If any person liable under paragraph (c) is insolvent, all its affiliates that controlled it at the time the dividend was paid, shall be jointly and severally liable for any resulting deficiency in the amount recovered from the insolvent affiliate.

Section 15. There is a new section to be numbered 40-5815, R.C.M. 1947, which reads as follows:

40-5815. **Examination of the association — annual report.** The association shall be subject to examination and regulation by the commissioner. The board of directors shall submit to the commissioner, not later than May 1 of each year, a financial report for the preceding calendar year in a form approved by the commissioner and a report of its activities during the preceding calendar year.

Section 16. There is a new section to be numbered 40-5816, R.C.M. 1947, which reads as follows:

40-5816. **Tax exemptions.** The association shall be exempt from payment of all fees and all taxes levied by this state or any of its subdivisions, except taxes levied on real property.

Section 17. There is a new section to be numbered 40-5817, R.C.M. 1947, which reads as follows:

40-5817. **Tax — writeoffs of certificates of contribution.**  
(1) Unless a longer period has been allowed by the commissioner, a member insurer shall at its option have the right to show a certificate of contribution as an asset in the form approved by the commissioner pursuant to section 9 (8) [40-5809(8)], at percentages of the original face amount approved by the commissioner, for calendar years as follows:

One hundred percent (100%) for calendar year of issuance, eighty percent (80%) for the first calendar year after year of issuance, sixty percent (60%) for second calendar year after year of issuance, forty percent (40%) for third calendar year after year of issuance, twenty percent (20%) for fourth calendar year after year of issuance.

(2) The insurer may offset the amount written off by it in the calendar year under subsection (1) above, against its premium tax liability to this state accrued with respect to business transacted in such year.

(3) Any sums acquired by refund, pursuant to section 9 (6) [40-5809(6)], from the association which have therefore been written off by contributing insurers and offset against premium taxes as provided in subsection (2) above, and is not then needed for purposes for this act, shall be paid by the association to the commissioner and by him deposited with the state treasurer for credit to the general fund of this state.

Section 18. There is a new section to be numbered 40-5818, R.C.M. 1947, which reads as follows:

40-5818. **Immunity.** There shall be no liability on the part of and no cause of action of any nature shall arise against any member insurer or its agents or employees, the association or its agents or employees, members of the board of directors, or the commissioner or his representatives, for any action taken by them in the performance of their powers and duties under this act.

Section 19. There is a new section to be numbered 40-5819, R.C.M. 1947, which reads as follows:

40-5819. **Stay of proceedings — reopening default judgments.** All proceedings in which the impaired insurer is a party in any court in this state shall be stayed sixty (60) days from the date an order of liquidation, rehabilitation, or conservation is final to permit proper legal action by the association on any matters germane to its powers or duties. As to a judgment under any decision, order, verdict, or finding based on default the association may apply to have such judgment set aside by the same court that made such judgment and shall be permitted to defend against such suit on the merits.

Approved March 21, 1974

## CHAPTER NO. 246

AN ACT AMENDING SECTION 75-8503.3, R.C.M. 1947, TO ALLOW PROHIBITION OF STUDENT REGISTRATION UNTIL ASSESSED TRAFFIC FINES ARE PAID.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 75-8503.3, R.C.M. 1947, is amended to read as follows:

"75-8503.3. **Motor vehicle regulation — enforcement of regulations — appeals.** The regents may authorize the president of each unit to:

(a) Assess fees not to exceed ten dollars (\$10) per quarter for parking on campus.

(b) Assess fines for violations of motor vehicle or parking regulations of each unit in an amount not to exceed one dollar (\$1) per offense; the

use of parking meters shall not be authorized unless installed prior to June 1, 1971.

(c) The proceeds from fines and fees collected shall be remitted to the unit at which collections are made to be used for appropriate maintenance and construction of parking facilities and for traffic control.

(d) Order the removal of vehicles parked in violation of motor vehicle regulations of each unit at the expense of the violator.

(e) Establish a system of appeals at each unit concerning parking violations.

(f) Withhold the amount of any unpaid parking fine from any amount owing any student, employee or faculty member, subject to the concurrence of the state auditor under the provisions of section 79-101.

(g) *To prohibit a student from registering if said student has unpaid parking assessments or fines outstanding resulting from on campus motor vehicle or parking violations within the previous one (1) year."*

Approved March 21, 1974

## CHAPTER NO. 247

AN ACT DECLARING THE RIGHT TO REFUSE TO PARTICIPATE IN A STERILIZATION OPERATION; PROVIDING PENALTIES AND REMEDIES; AND AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is a new section to be numbered 69-5222, R.C.M. 1947, which reads as follows:

69-5222. **Definitions.** As used in this act:

(1) "Sterilization" means the performance of, or assistance or participation in the performance of, or submission to, an act or operation intended to eliminate an individual's reproductive capacity.

(2) "Person" includes one or more individuals, partnerships, associations, and corporations.

Section 2. There is a new section to be numbered 69-5223, R.C.M. 1947, which reads as follows:

69-5223. **Refusal to participate in sterilization.** (1) No private hospital or health care facility shall be required contrary to the religious or moral tenets or the stated religious beliefs or moral convictions of such hospital or facility as stated by its governing body or board to admit any person for the purpose of sterilization or to permit the use of its facilities for such purpose. Such refusal shall not give rise to liability of such hospital or health care facility, or any personnel or agent or governing board

thereof, to any person for damages allegedly arising from such refusal, nor be the basis for any discriminatory, disciplinary, or other recriminatory action against such hospital or health care facility, or any personnel, agent, or governing board thereof.

(2) All persons shall have the right to refuse to advise concerning, perform, assist, or participate in sterilization because of religious beliefs or moral convictions. If requested by any hospital or health care facility, or person desiring sterilization, such refusal shall be in writing signed by the person refusing, but may refer generally to the grounds of "religious beliefs and moral convictions." The refusal of any person to advise concerning, perform, assist, or participate in sterilization, shall not be a consideration in respect of staff privileges of any hospital or health care facility, nor a basis for any discriminatory, disciplinary, or other recriminatory action against such person, nor shall such person be liable to any person for damages allegedly arising from refusal.

(3) It shall be unlawful to interfere or attempt to interfere with the right of refusal authorized by this section, whether by duress, coercion, or any other means. The person injured thereby shall be entitled to injunctive relief, when appropriate, and shall further be entitled to monetary damages for injuries suffered.

(4) Such refusal by any hospital or health care facility or person shall not be grounds for loss of any privileges or immunities to which the granting of consent may otherwise be a condition precedent, or for the loss of any public benefits.

Section 3. There is a new section to be numbered 69-5224, R.C.M. 1947, which reads as follows:

69-5224. **Severability.** It is the intent of the legislature that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all the valid applications that are severable from the invalid applications.

Section 4. This act is effective on its passage and approval.

Approved March 21, 1974

## CHAPTER NO. 248

AN ACT AMENDING SECTION 6 OF CHAPTER 60, SESSION LAWS OF 1974 (32-2144.6, R.C.M. 1947) TO PROVIDE FOR FEES OF JUSTICES OF THE PEACE; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 6 of chapter 60, session laws of 1974 codified as 32-2144.6, R.C.M. 1947, is amended to read as follows:

"32-2144.6. **Enforcement.** (1) A person violating the speed limit pursuant to section 1 of this act [32-2144.1] is guilty of the offence of unnecessary waste of a resource currently in short supply and upon conviction shall be fined not to exceed five dollars (\$5) and no jail sentence may be imposed. Bond for this offense shall be five dollars (\$5). *For the purpose of this act only, the fees of the justice of the peace shall be four dollars (\$4) to be remitted as set forth in section 25-311.*"

Section 2. This act is effective on passage and approval.

Approved March 21, 1974

## CHAPTER NO. 249

AN ACT TO AMEND SECTIONS 53-1013, 53-1025 AND 53-1026, R.C.M. 1947, TO CHANGE THE ADMINISTERING AGENCY FOR THE REGISTRATION OF SNOWMOBILES FROM THE DEPARTMENT OF REVENUE TO THE REGISTRAR OF MOTOR VEHICLES AND TO PROVIDE THAT SNOWMOBILES MAY BE REGISTERED AND TAX-PAID DECALS ISSUED IN THE COUNTY TREASURERS OFFICE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 53-1013, R.C.M. 1947, is amended to read as follows:

"53-1013. **Certificate of ownership.** (1) No snowmobile shall be operated upon any public or private lands, trails, easements, lakes, rivers, streams, roadways or shoulders of roadways, streets or highways, unless it has first been registered with the *registrar of motor vehicles* in accordance with the laws of this state.

(2) Before such registration may be accomplished, the owner of a snowmobile shall make application for a certificate of ownership with the county treasurer of the county in which the owner resides, upon forms to be furnished for this purpose, and to provide for substantially the following information: Name of owner, residence by town and county, business or home mail address, name and address of lien holder, amount due under contract or lien, name and address of manufacturer, model number or name, serial number, and name and address of dealer or other person from whom acquired. The application shall be signed by at least one owner, or by a properly authorized officer or representative of the owner.

(3) If a snowmobile has previously been registered, under the provisions of this act, the application for registration must be accompanied by the immediately previous registration receipt, or by an affidavit upon a prescribed form, stating under oath that the vehicle had not been operated during the immediately previous year; provided, however, that this paragraph shall not be applicable to snowmobiles that are purchased as new and unused machines or that were operated when the provisions of this act were not in force and effect.

(4) Upon completion of the application of registration, in quintuplicate, on forms furnished by the registrar of motor vehicles, the county treasurer shall issue to the applicant two copies of the application marked "owner's certificate of registration," one of which shall be marked "file copy," and forward one copy and the application to the registrar of motor vehicles, who shall cause to be entered the information contained in the application upon the corresponding records of his office, and shall furnish the applicant a certificate of ownership, which shall contain the information found on the registration, and the owner shall, at all times, retain possession of the certificate of ownership, except when the same is being transmitted to and from the registrar of motor vehicles for endorsement or cancellation.

(5) Upon application for an owner's certificate of registration, a fee of two dollars (\$2) shall be paid to the county treasurer, one-half (½) of which fee shall be forwarded by the county treasurer to the registrar of motor vehicles.

(6) Before a registration decal may be applied for pursuant to the laws of this state, the owner must present the owner's certificate of ownership, or copy of completed application therefor, as a prerequisite to completing the application for the registration decal."

Section 2. Section 53-1025, R.C.M. 1947, is amended to read as follows:

**"53-1025. Display of tax-paid decals on snowmobiles required — application and issuance.** (a) No snowmobile shall be operated by any person in the state of Montana unless there is displayed in a conspicuous place thereon a decal as visual proof that Montana personal property taxes have been paid thereon for the current year. Application for the issuance of such tax-paid decal shall be made to the county treasurer upon forms to be furnished for this purpose, which may be obtained from the *registrar of motor vehicles* or at the county assessor's office in the county wherein the owner resides, and is to provide for substantially the following information: name of owner, address, registration number, name of manufacturer, model number, make, horsepower, year of manufacture, statement evidencing assessment, payment of property tax, and such other information as the *registrar of motor vehicles* may require. Said application shall be signed by the county treasurer and transmitted by him to the *registrar of motor vehicles* accompanied by a fee of two dollars (\$2). All moneys collected from payment of such fees shall be turned over to the state treasurer and placed by him in the earmarked revenue fund to the credit of the state fish and game commission, with one dollar (\$1) designated for use in enforcing the purposes of this act and one dollar (\$1) designated for use in developing snowmobile facilities. Upon receipt of the application in approved form the *registrar of motor vehicles* or county treasurer shall issue to the applicant a decal in the style and design prescribed by the *registrar of motor vehicles* and of a different color than the preceding year, numbered numerically.

(b) *Before filing the application with the county treasurer, the applicant shall submit the same to the county assessor of the county and the county assessor shall enter on the application in a place provided for that purpose,*

*the full and true and assessed valuation of the snowmobile for the year for which the application is made.*

*(c) The applicant shall pay the county treasurer the application fee and shall also pay the personal property taxes assessed against the snowmobile for the current year before the application for registration or reregistration may be accepted by the county treasurer."*

Section 3. Section 53-1026, R.C.M. 1947, is amended to read as follows:

**"53-1026. Application to be made annually. Application must be made to the county treasurer for the issuance of tax-paid decals annually. All tax-paid decals expire on December 31 of the year in which they are issued and application for the issuance of a tax-paid decal must be filed with the county treasurer not later than January 31 of each year."**

Approved March 21, 1974

## CHAPTER NO. 250

AN ACT TO INCREASE THE ALLOCATION FROM THE COAL LICENSE TAX FOR THE PURPOSE OF SUPPORT OF COUNTY GOVERNMENT; AMENDING SECTION 84-1309.1, R.C.M. 1947; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 84-1309.1, R.C.M. 1947, is amended to read as follows:

**"84-1309.1. Disposal of license taxes.** License taxes collected under the provisions of this chapter are allocated as follows:

(1) To the county general fund from which coal was mined *three cents (3¢)* per ton.

(2) All other revenues from license taxes collected under the provisions of this chapter shall be deposited to the credit of the general fund of the state."

Section 2. This act is effective on its passage and approval.

Approved March 21, 1974

## CHAPTER NO. 251

AN ACT AMENDING SECTIONS 75-6317, 75-7201 AND 75-7202, R.C.M. 1947, TO REPEAL THE ELEMENTARY AND HIGH SCHOOL TUITION SCHEDULES; AND TO ESTABLISH THE ANNUAL

CALCULATION OF A HIGH SCHOOL DISTRICT'S TUITION RATE  
ON THE BASIS OF ACTUAL EXPENDITURES.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 75-6317, R.C.M. 1947, is amended to read as follows:

**"75-6317. Reporting, budgeting and payment for high school tuition.** At the close of the school term of each school fiscal year, the trustees of each high school district shall *determine the rate of tuition for the current school fiscal year by:*

(1) *totaling the actual expenditures from the district general fund, retirement fund and debt service fund;*

(2) *dividing the amount determined in subsection (1) above by the ANB of the district for the current fiscal year, as determined under the provisions of section 75-6902; and*

(3) *subtracting the total of the per ANB amount allowed by section 75-6905 that represents the foundation program as prescribed by section 75-6906 plus the per ANB amount determined by dividing the state financing of the district permissive levy by the ANB of the district, from the amount determined in subsection (2) above.*

*Before July 15, the trustees shall report to the county superintendent of the county in which the district is located:*

(a) *the names, addresses, and resident counties of the pupils attending the schools of the district under an approved tuition agreement;*

(b) *the number of days of school attended by each pupil;*

(c) *the amount, if any, of each pupil's tuition payment that the trustees, in their discretion, shall have the authority to waive; and*

(d) *the rate of current school fiscal year tuition, as determined under the provisions of this section.* When the county superintendent receives a tuition report from a district, he shall immediately send the reported information to the county superintendent of each county in which the reported pupils reside.

When the county superintendent of any county receives a tuition report or reports for high school pupils residing in his county and attending an out-of-county high school under approved tuition agreements, he shall determine the total amount of tuition due such out-of-county high schools on the basis of the following per pupil schedule: *the rate of tuition, number of pupils attending under an approved tuition agreement and other information provided by each high school district where resident county pupils have attended school.*

The total amount of the high school tuition *with* consideration of any tuition waivers, shall be financed by the county basic special tax for high schools as provided in section 75-6914.



In December, the county superintendent shall cause the payment by county warrant of the high school tuition obligations established under this section out of the first moneys realized from the county basic special tax for high schools. The payment shall be made to the county treasurer of the county where each high school entitled to tuition is located. The county treasurer shall credit such tuition receipts to the general fund of the applicable high school district, and the tuition receipts shall be used in accordance with the provisions of section 75-6926."

Section 2. Section 75-7201, R.C.M. 1947, is amended to read as follows:

"75-7201. **Elementary tuition rates.** Whenever a pupil of an elementary district has been granted approval to attend a school outside of the district in which he resides, under the provisions of section 75-6313 or 75-6314, such district shall pay tuition to the elementary district where the pupil attends school on the basis of the *rate of tuition determined by the attended district. The rate of tuition shall be determined by:*

(1) *totaling the actual expenditures from the district general fund, retirement fund and debt service fund;*

(2) *dividing the amount determined in subsection (1) above by the ANB of the district for the current fiscal year, as determined under the provisions of section 75-6902; and*

(3) *subtracting the total of the per ANB amount allowed by section 75-6905 that represents the foundation program as prescribed by section 75-6906 plus the per ANB amount determined by dividing the state financing of the district permissive levy by the ANB of the district, from the amount determined in subsection (2) above."*

Section 3. Section 75-7202, R.C.M. 1947, is amended to read as follows:

"75-7202. **End of term tuition report and notification of resident elementary district.** At the close of the school term of each school fiscal year and before the fifteenth (15th) day of July, the trustees of each elementary district shall report to the county superintendent:

(1) the names of the pupils attending the schools of the district under an approved tuition agreement with the district of residence of each pupil;

(2) the number of days of school attended by each pupil;

(3) the amount, if any, of each pupil's tuition payment that the trustees, in their discretion, may waive. Any waiver of tuition shall be applied equally to all pupils; *and*

(4) *the rate of the current school fiscal year tuition, as determined under the provisions of section 75-7201.* When the county superintendent receives a tuition report from a district, he shall immediately send the reported information to the county superintendent of each county in which the reported pupils reside. In turn, every county superintendent shall notify each elementary district of his county of the tuition amounts owed to other elementary districts of the county or outside of the county. Such

amounts shall be established from the tuition rate and *other* information reported by the district in which the pupil attended school. No tuition shall be due when a pupil attends less than forty (40) days of school in such district."

Approved March 21, 1974

## CHAPTER NO. 252

AN ACT TO AMEND SECTION 28-109, R.C.M. 1947, PROVIDING FOR AN INCREASE IN FIRE PROTECTION AND SUPPRESSION FEES PAID BY OWNERS OF CLASSIFIED FOREST LAND FROM NOT MORE THAN TEN CENTS (10¢) PER ACRE TO NOT MORE THAN SIXTEEN CENTS (16¢) PER ACRE FOR CLASS I LANDS AND FROM NOT MORE THAN THREE CENTS (3¢) PER ACRE TO NOT MORE THAN FIVE CENTS (5¢) PER ACRE FOR CLASS II LANDS; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 28-109, R.C.M. 1947, is amended to read as follows:

"28-109. **Duty of owner of classified forest land.** Every owner of forest land classified as such by the board is hereby required to furnish protection against the starting or existence, and to suppress the spread, of fire on such land during the full period of each forest fire season defined by this act. Such protection and suppression shall be in conformity with reasonable rules and standards for adequate fire protection to be prescribed by the board. If such owner does not provide for such protection and suppression, said board may provide the same, at a cost to the landowner of not more than *sixteen cents (16¢)* per acre per year for Class I land and not more than *five cents (5¢)* per acre per year for Class II land and in the event thereof, the owner of such land shall pay to the county treasurer of the county in which such land is situated, the charge for the same approved by the board, in accordance with the provisions of this act. No other charges shall be assessed those landowners participating, except in cases of proven negligence on the part of the landowner or his agent.

The forest land of Montana shall be classified for protection and assessment purposes as follows:

(a) Class I Land. Shall include all forest land primarily suitable for production of timber, forest land primarily suitable for joint use for timber production and the grazing of livestock as a permanent or semipermanent joint use or as a temporary joint use during the interim between logging and reforestation.

(b) Class II Land. Shall include all lands primarily suitable for grazing or other agricultural purposes, which are intermingled with or contiguous to the land described in subsection (a), above.

(c) Class III Land. Shall include lands primarily suitable for grazing or other agricultural purposes including structures and improvements which are within the forest fire protection areas but not meeting the detailed definitions of lands described in subsection (b), above. These lands may only be listed for payment when requested by the landowner at rates determined by the state forester and shall be submitted to the county assessor for collection and disposition as provided in section 28-111."

Section 2. This act shall be effective on its passage and approval.

Approved March 21, 1974

## CHAPTER NO. 253

AN ACT FOR THE CODIFICATION AND GENERAL REVISION OF  
THE LAWS RELATING TO THE DEPARTMENT OF NATURAL  
RESOURCES AND CONSERVATION.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is a new section to be numbered 28-101.1, R.C.M. 1947, which reads as follows:

28-101.1. **Purpose of chapter.** It is the purpose of this chapter to provide for the protection and conservation of forest resources, range, and water, regulation of streamflow, and the prevention of soil erosion. It is further the purpose of this chapter to more adequately promote and facilitate the cooperation, financial and otherwise, between the state and public and private agencies which are associated in such work.

Section 2. Section 28-103, R.C.M. 1947, is amended to read as follows:

"28-103. **Definitions.** *Unless the context requires otherwise, in this chapter:*

(1) *"Forest land"* means land which has enough timber, standing or down, slash, or brush, to constitute in the judgment of the board a fire menace to life or property; grassland and agricultural areas are included when *those* areas are intermingled with or contiguous to areas of forest land.

(2) *"Lands"* for conservation purposes means all forest lands within this state which are officially classified by the board as forest lands in accordance with section 28-104(b).

(3) *"Forest fire"* means a fire burning uncontrolled on forest lands.

(4) *"Organized forest fire protection district"* means a definite forest land area, the boundaries of which are fixed, and wherein forest fire protection is provided through the medium of an agency recognized by the board.

(5) *"Recognized agency"* means an agency representing owners of

forest lands in an organized forest fire protection district, organized for the purpose of providing forest fire protection in *the* district and recognized by the board as giving adequate fire protection to forest lands in accordance with rules *adopted* by the board. A public agency administering and protecting forest lands may also be recognized by the board as such an agency.

(6) "*Forest fire season*" means the period of each year beginning on May first and ending on September thirtieth, inclusive; however, in the event of excessive or great fire danger, this period may be expanded when in the judgment of the *department* dangerous fire conditions exist. When expanded, the *department* shall give public notice.

(7) "*Forest fire protection*" means the work of prevention, detection and suppression of forest fires.

(8) "*Protection zone*" means a broad area within which the forest fire protection costs are approximately the same. Protection zones *shall* be designated by the *department*, with the approval of the board.

(9) "*Conservation*" means the protection and wise use of forest, forest range, forest water, and forest soil resources in keeping with the common welfare of the people of *this* state.

(10) "*Owner*" means the person, firm, association or corporation having the actual, beneficial ownership of forest land, or timber, other than an easement, right of way, or mineral reservation.

(11) "*Board*" means the board of natural resources and conservation, provided for in section 82A-1509.

(12) "*Department*" means the department of natural resources and conservation, provided for in Title 82A, chapter 15."

Section 3. Section 28-104, R.C.M. 1947, is amended to read as follows:

**"28-104. Responsibility of actual owner of land or timber — scope of act.** (1) *If the owner does not appear upon the public records as the holder of the legal title to the land or timber, he is nevertheless primarily responsible for the performance of the acts and duties imposed upon him by this chapter. Where the owner of the timber is not the owner of the land, the primary responsibility for the performance of the acts and duties imposed by this chapter is upon the owner of the timber.*

(2) *Sections 28-101.1 through 28-129 apply to all forest lands within this state which are officially classified by the board as forest lands according to the definition of forest land in section 28-103."*

Section 4. Section 28-105, R.C.M. 1947, is amended to read as follows:

**"28-105. Powers of board.** *The board may.*

(1) *Classify the forest land areas of the state for which conservation and fire protection measures are reasonably required, and change or modify the classification from time to time as in its judgment is proper.*

(2) *Create organized forest fire protection districts. Before a district is created the board shall hold a hearing in any county in which the pro-*

posed district or a part thereof *is* included and *the department* shall give notice of *the* hearing at least twenty (20) days in advance thereof to all owners to be affected by *the* proposed district. *Service of the* notice may be made by registered or certified mail or by publication in a newspaper published in the county in which *the* hearing is to be held, and if no newspaper is published in *the* county then in a newspaper having a general circulation therein. A forest fire protection district may *not* be created unless approved in writing by vote of not less than fifty-one per cent (51%) of the owners representing at least fifty-one per cent (51%) of the acreage to be involved in *the* proposed forest fire protection district.

(3) *Adopt and enforce through the department* reasonable rules for the purpose of enforcing and accomplishing the provisions and purposes of this chapter; however, *these* rules *may* not conflict with the powers of the board of land commissioners."

Section 5. Section 28-106, R.C.M. 1947, is amended to read as follows:

"28-106. **Powers and duties of department.** (1) *The department may* give technical and practical advice to the farmers of the state concerning forest, *range, water, and soil* conservation and the establishment and maintenance of woodlots, windbreaks and shelters.

(2) *The department may provide for forest fire protection of any forest lands through the department or by contract or any other feasible means, in cooperation with any federal, state, or other recognized agency.*

(3) *The department shall cooperate with all public and other agencies in the development, protection, and conservation of the forest, range, and water resources in this state.*

(4) *The department shall assist the department of state lands in the protection, economic development, and use of the state forests and forest land held by the state for the purposes and benefit of the common schools and state institutions."*

Section 6. Section 28-109, R.C.M. 1947, is amended to read as follows:

"28-109. **Duty of owner of classified forest land.** (1) *An owner of forest land classified as such by the board shall protect* against the starting or existence, and suppress the spread, of fire on *that* land during the full period of each forest fire season. *This* protection and suppression shall be in conformity with reasonable rules and standards for adequate fire protection *adopted* by the board. If *the* owner does not provide for *the* protection and suppression, *the department* may provide *it*, at a cost to the landowner of not more than ten cents (10¢) per acre per year for Class I land and not more than three cents (3¢) per acre per year for Class II land; in the event thereof, the owner of *the* land shall pay to the county treasurer of the county in which *the* land is situated the charge for the same approved by the *department*, in accordance with this chapter. No other charges *may* be assessed those landowners participating, except in cases of proven negligence on the part of the landowner or his agent.

(2) The forest land of Montana shall be classified for protection and assessment purposes as follows:

(a) Class I Land: forest land primarily suitable for production of timber, *and* forest land primarily suitable for joint use for timber production and the grazing of livestock as a permanent or semipermanent joint use or as a temporary joint use during the interim between logging and reforestation.

(b) Class II Land: lands primarily suitable for grazing or other agricultural purposes, which are intermingled with or contiguous to the land described in subsection (a) above.

(c) Class III Land: lands primarily suitable for grazing or other agricultural purposes, including structures and improvements, which are within the forest fire protection areas but *do not meet* the detailed definitions of lands described in subsection (b) above. These lands may only be listed for payment when requested by the landowner at rates determined by the *department* and shall be submitted to the county assessor for collection and disposition as provided in section 28-111."

Section 7. Section 28-110, R.C.M. 1947, is amended to read as follows:

"28-110. **What constitutes compliance.** (1) An owner of Class I or Class II forest lands within an organized forest protection district, while a member of, or while participating in a recognized agency for forest protection shall be *considered* to have fully complied with the requirements of section 28-109.

(2) In establishing boundaries of organized forest fire protection districts covering *Class I or Class II* forest lands, the board may for the purpose of administrative convenience designate roads, pipelines, streams, or other recognizable landmarks as boundaries."

Section 8. Section 28-111, R.C.M. 1947, is amended to read as follows:

"28-111. **Determination of costs of fire protection — certification — tax levy.** (1) The *department shall* prepare a fire protection plan for the approval of the board in which fire protection costs for each classification within each protection zone *are* determined. The board *shall* establish the portion of the planned fire protection costs to be borne by the state, and the portion to be borne by the owners of classified forest land. The *department shall* request the legislature to appropriate the state's portion as approved by the board. After the appropriation is made by the legislature, the *department shall* cause an assessment to be made on the owners of classified forest land, as specified in section 28-109, sufficient to bring the total amount received to the amount specified in the approved plan.

(2) On or before the second Tuesday in August of each year, the *department* shall determine the names of all owners who have failed to provide the forest fire protection for their lands required by this *chapter*, together with the description of *the* lands and *their* acreage, and calculate the total amount due to the *department* from each owner for forest fire protection, which *amount may* not exceed the maximum specified in *section 28-109*.

(3) The *department* shall certify in writing to the county assessor of each county the names of *these* owners of forest lands in his county,

together with a description of *their* lands and a statement of the amount found to be due and owing by each of *the* owners to the *department* for forest fire protection.

(4) Upon receiving *the* certificate from the *department* showing the amount due, the county assessor shall extend the amounts upon the county tax rolls covering *the* lands, and *the* sums shall become obligations of the owner to be paid and collected in the same manner and at the same time and with like penalties as general state and county taxes upon the same property are collected. All sums collected shall be promptly transmitted to the state treasurer, who *shall* deposit *them* in the *federal and private grant clearance fund for distribution in accordance with section 28-124.*"

Section 9. Section 28-112, R.C.M. 1947, is amended to read as follows:

"28-112. **Payment under protest.** An owner who is required to pay to the county treasurer any sum for forest protection as required by this *chapter* and who contends that he is not legally obligated to pay *the* sum or some part thereof, shall pay *it* to the county treasurer under written protest stating the reasons for *the* protest. *The* payment under protest, and all proceedings subsequent thereto, shall be in conformity with the law of *this* state providing for the payment of taxes under protest and action to recover the same. In the hearing and determination of any action to recover *the* payment under protest, all questions of the legality and reasonableness of the proceedings of the board *and the department* may be reviewed and decided."

Section 10. Section 28-113, R.C.M. 1947, is amended to read as follows:

"28-113. **Amount due for protection — lien on land — remedies.** Whenever the *department* provides forest protection during a forest fire season for any forest land or timber not protected by the owner thereof as required by this *chapter*, the amount due for *the* forest protection is a lien upon *the* land or timber which shall continue until such time as the amount due *is* paid. *The* lien *has* the same force, effect and priority as general tax liens under the laws of the state, and *is* subject and inferior only to tax liens on *the* lands. The county attorney of the county in which *the* land is situated shall on request of the *department* foreclose the lien in the name of the state and in the manner provided by law, or *the* county attorney upon the request of the *department*, shall institute an action against the forest landowner, in the name of the state, in any district or justice court having jurisdiction, to recover the debt, and the state in *the* action *is* not required to pay any fees or costs to the clerk of the court or justice of the peace. The complaint and all subsequent proceedings in *the* action shall conform as nearly as practicable to that provided by section 84-4302. The remedies provided by this section *are* cumulative and do not affect the other provisions of this *chapter* for the payment and collection of amounts due to the *department.*"

Section 11. Section 28-114, R.C.M. 1947, is amended to read as follows:

"28-114. **Permit for burning required.** During the forest fire season

or *an* expansion thereof a person *may not* ignite or set a forest fire, slash burning fire, land clearing fire, debris burning fire, or *an* open fire, within forest lands, without an official written permit to ignite or set *the* fire from a firewarden or peace officer authorized by the *department* to issue such permits for *forest* lands. A permit *is not* required *in order to* build, set or ignite a campfire within and upon a designated improved camping ground, or upon a plot of land from which all vegetable and inflammable matter and debris have been removed to a point where it may not become ignited by the campfire or by sparks therefrom."

Section 12. Section 28-116, R.C.M. 1947, is amended to read as follows:

"28-116. **Penalty for failure to comply with permit.** A person to whom a written permit *is* issued to set or ignite a fire within forest lands during the forest protection season shall comply strictly with the permit. A person *who fails to* comply with *the permit*, *leaves the* fire unattended, *leaves the* fire before it is totally extinguished, or negligently *allows the* fire to spread from or beyond the burning area defined by the permit, *is* guilty of a misdemeanor. The *department* shall prescribe the form and substance of such permit."

Section 13. Section 28-119, R.C.M. 1947, is amended to read as follows:

"28-119. **Sawdust piles — restrictions.** (1) *Before* each forest fire season, all persons, firms or corporations, creating or responsible for mill waste within the forest areas, *shall* treat, dispose of, remove or reduce the hazards created so that *the* accumulation of sawmilling waste does not constitute a fire hazard.

(2) A sawmill located within or contiguous to forest lands *may not* accumulate in one pile, sawdust in excess of an amount resulting from the sawing of five hundred thousand (500,000) feet log scale of sawlogs, however, a larger sawdust pile may be accumulated when there is no reasonable danger of fire therefrom and a permit for the additional accumulation is granted by the *department*. If burning is the disposal method elected, each sawdust pile so accumulated shall be prepared for burning by cribbing the base of each pile with slabs and burned in accordance with *rules adopted by the department*."

Section 14. Section 28-121, R.C.M. 1947, is amended to read as follows:

"28-121. **Disposition of fines collected.** *Fines* collected in a court of the state under this act shall be transferred to the state treasurer for deposit *in the federal and private grant clearance fund*. Whenever a person is convicted in any court of a violation of this act, the court *may* levy and collect as costs in *the* case the amount necessary to compensate the county for the expenditures made in and for the prosecution of *the* offender. *These* costs when collected shall be deposited by the court, with the proper county treasurer for the benefit of *the* county."

Section 15. Section 28-122, R.C.M. 1947, is amended to read as follows:



"28-122. **Land commissioners and county commissioners to cooperate.** The *department of state lands* and boards of county commissioners may *cooperate* with the *department* to the extent legally permissible in providing means and methods of safeguarding the forest land lying within the state and in preventing fire nuisance thereon. The *department of state lands* and the boards of county commissioners may list forest lands under their jurisdiction with a recognized agency or the *department* for forest protection. The moneys the state and counties become liable for under this section shall be paid from funds provided by law for the protection of the forest lands owned by the state and counties."

Section 16. Section 28-123, R.C.M. 1947, is amended to read as follows:

"28-123. **Disposition of moneys.** The following funds may be expended as directed by the *department* for fire prevention, detection, suppression and for forest range, water, and soil conservation: All moneys collected by county treasurers as assessments on forest lands for forest protection; moneys collected for the abatement of public nuisances; all fines collected for violations of this *chapter*; the state's share of the *cooperative* fire protection funds allocated by the federal government; any other funds provided for the purposes herein indicated. All other *cooperative* funds collected, appropriated or allocated for the use of the *department*, including funds for the removal of slash hazards resulting from logging or other wood operations on state and private forest lands, those provided for the purpose of helping to maintain the maximum productivity of the forests of the state, those provided for purposes designed to assist the farmers of the state in the establishment of windbreaks and woodlots in localities where *those* forest plantings are helpful, and funds for other *cooperative* work, may not be expended except for the specific purposes for which *they* were collected, appropriated or allocated."

Section 17. Section 28-124, R.C.M. 1947, is amended to read as follows:

"28-124. **Disbursement of moneys.** All *cooperative* moneys collected under section 28-111 and appropriated or allocated for the use of the *department* and deposited with the state treasurer shall be transferred to the earmarked revenue fund. *These* moneys may then be paid out after approval and request of the *department*."

Section 18. Section 28-125, R.C.M. 1947, is amended to read as follows:

"28-125. **Ex officio fire wardens — powers.** The officers, employees and persons hereinafter designated are hereby declared ex officio fire wardens to serve without compensation for the purposes of enforcing the penal provisions of this *chapter*, enforcing any rule *adopted* by the board under this *chapter*, and enforcing any state or federal forest laws: Members of the board, the *director of the department* and any employee of the *department* designated by him, officers of organized forest protection districts, members of the Montana highway patrol, all field officers in the United States forest service residing in Montana, game and deputy game

wardens, *and* officers of the national park service and the Indian service situated in Montana. For those purposes set forth above, *an ex officio fire warden has all the powers of fire wardens under section 81-1413.*"

Section 19. Section 28-127, R.C.M. 1947, is amended to read as follows:

"28-127. **Penalty for violation of chapter.** A person who violates this *chapter*, or any rule *adopted* by the board or *department* pursuant to this *chapter*, is guilty of a misdemeanor unless otherwise provided by this *chapter*, and shall be punished by a fine of not more than five hundred dollars (\$500) or imprisonment in a county jail for not more than six (6) months, or both."

Section 20. Section 28-129, R.C.M. 1947, is amended to read as follows:

"28-129. **Owners of forest lands may have hearing before board — conditions.** *An owner of forest land within an organized forest fire protection district is entitled to a hearing before the board, after a request therefor on any subject pertaining to the activities of the board or of the department, or any recognized agency as agent of the department, affecting the owner's property. A request for a hearing before the board may not have the effect of suspending the operations of the board or the department, or any agent of the department, undertaken pursuant to this chapter, but, upon the hearing, the board may terminate those operations if found unreasonable. A hearing pertaining to costs charged against the forest land of an owner for protection thereof, as provided in section 28-109, must be requested on or before the fifteenth day of August of each year.*"

Section 21. Section 28-130, R.C.M. 1947, is renumbered 28-204, and is amended to read as follows:

"28-204. **Policy for control of forest diseases.** It is the public policy of the state to protect and preserve forest resources from destruction by forest insect pests and tree diseases, to protect the forests and watersheds of Montana, to enhance the production of forests, to promote the stability of forest industry, to protect the recreational values of the forest, *and* to independently and through *cooperation* with the federal government and private forest landowners adopt measures to control, suppress and eradicate outbreaks of forest insect pests and tree diseases."

Section 22. Section 28-131, R.C.M. 1947, is renumbered 28-205, and is amended to read as follows:

28-205. **Definitions.** *In this chapter:*

(1) "*Forest land*" means any land which has enough forest growth, standing or down, to constitute, in the judgment of the *department*, an insect or disease infestation breeding ground of a nature to constitute a menace, injurious and dangerous to the forest resources in the district or zone of infestation.

(2) "*Forest landowner*" means the person, firm, association, or corporation having the actual, beneficial ownership of forest land or timber, other than an easement, right-of-way, or mineral reservation.

(3) "*Department*" means the department of natural resources and conservation, provided for in Title 82A, chapter 15."

Section 23. Section 28-133, R.C.M. 1947, is renumbered 28-206, and is amended to read as follows:

**"28-206. Forest infestation — zoning — suppression or eradication.** (1) Whenever the *department* determines that there exists an infestation of forest insect pests or forest tree diseases injurious to the timber or forest growth on forest lands within the state, and that *the* infestation is of such a character as to be a menace to the timber or forest growth of this state, the *department* shall, with the approval of the board of *natural resources and conservation*, declare the existence of a zone of infestation and fix the boundaries so as to definitely describe and identify the zone.

(2) Thereupon, the *department may enter* upon the land within *the* zone of infestation and cause the forest insect pest infestation or forest tree disease to be suppressed, eradicated and destroyed in the manner approved by *it*. In order to accomplish the suppression, eradication and destruction of *the* infestation, the *department* may enter into *cooperative agreements* with the federal government or other public or private agencies, and with forest landowners, using such funds as *are* made available for *those* purposes."

Section 24. Section 28-134, R.C.M. 1947, is renumbered 28-207, and is amended to read as follows:

**"28-207. Abolition of zone of infestation.** When the *department* determines that forest insect or disease control work within the designated zone of infestation is no longer necessary or feasible, *it* shall abolish the zone of infestation."

Section 25. Section 28-301, R.C.M. 1947, is amended to read as follows:

**"28-301. Montana forest and conservation experiment station established.** There is hereby established in the *university of Montana* forestry school, a station to be known as the Montana forest and conservation experiment station, which shall be under the direction of the state board of education."

Section 26. Section 28-303, R.C.M. 1947, is amended to read as follows:

**"28-303. Purposes of station.** It is the purpose of this station:

(1) To study the forest and forest land resources of the state to the end that the state and its citizens may attain the highest economic and social benefits from the forest soils within the state and the influences and products flowing therefrom.

(2) To study the growth and the utilization of timber with special reference to their improvement and the widening of the markets available to the state.

(3) To determine the relationship between the forest and water conser-

vation and waterflow regulation; the forest and pasturage for domestic livestock and wild life; the forest and recreation and those other direct and indirect benefits that may be secured by the maintenance of or the establishment of forests or woodlands.

(4) To study and develop the establishment of windbreaks, shelter belts and woodlots on the farms of the state that moisture may be conserved thereby for the best production of agricultural crops and forage; for the prevention of soil wastage and erosion; to make the farm home more comfortable and to produce forest material for the use of the farmer and the stockman.

(5) To study the findings of other agencies that the information thus obtained may be used to improve the growth, management and utilization of the timber within the state and to protect it against damage by fire, insects, disease and other harmful agencies.

(6) To collect, to compile and to publish statistics relative to Montana forests and forestry and the influences flowing therefrom; to prepare and publish bulletins and reports, with the necessary illustrations and maps that the information collected by *the* station in forestry and in conservation may be made available for use and to distribute *this* information or material in such other ways as the state board of education may direct.

(7) To collect a library and bibliography of literature pertaining to or useful for the purpose of this act.

(8) To study logging, lumbering and milling operations and other operations dealing with the products of forest soils with special reference to their improvement; to investigate, and make tests of forest products produced or that may be produced within the state that markets may be improved thereby.

(9) To consider such other scientific and economic problems as, in the judgment of the state board of education, are of value to the people of the state.

(10) To *cooperate* with the other departments of the university of Montana, the departments of the state government when mutually beneficial, *and* with private individuals and agencies; and to *cooperate* with the United States government and its branches as a land grant institution, or otherwise, in accordance with their regulations.

(11) To establish such field experiment stations as in the judgment of the state board of education may be necessary. The state board of education *may* accept, for and in behalf of the state of Montana, such gifts of land or other donations as may be made to the state for the purposes of this act."

Section 27. Section 28-404, R.C.M. 1947, is amended to read as follows:

**"28-404. Reduction or management of fire hazard created by cutting timber.** Everyone engaged, or about to engage, in the cutting of any forest product or conducting standing improvement such as, but not limited to, thinning, weeding and pruning, upon private lands within the

state of Montana shall provide for the reduction or management of the fire hazard to the property of others thus created or to be created by entering into a fire hazard reduction agreement as provided in sections 28-408 to 28-412, or by posting a bond to the state of Montana in such form and for such amount as may be prescribed by the *department of natural resources and conservation*; provided, however, that the amount of the bond so prescribed shall not be in excess of the amount which such person would be required to pay under said sections 28-408 to 28-412, and that the bond shall be conditioned upon full and faithful compliance with all requirements under said sections 28-408 to 28-412, and the faithful reduction or management of such fire hazards in the manner prescribed by law. Such bond shall be released upon completion of the work in compliance with the terms of the bond. The *department* shall issue a certificate of compliance with the terms of this section to all persons who have complied therewith."

Section 28. Section 28-405, R.C.M. 1947, is amended to read as follows:

"28-405. **Reduction of slash and forest debris along right of way.** Everyone clearing right of way for any railroad, public highway, public trail, private road, trail, ditch, dyke, pipeline or wire lines, or any other transmission or transportation utility right of way, except temporary roads located within the boundaries of the cutting area and which are used in the actual logging operations, shall reduce the hazard resulting from such clearing or from the cutting of material for the construction of such public or private utility unless exempted by the *department*.

Hazard reduction, including burning where this method of disposal is used, shall be done as rapidly as cutting or clearing progresses; provided that upon application to the *department* he may grant a permit extending the time within which such burning must be done in compliance with all the provisions of this chapter relating to burning permits during the closed season.

The provisions of the section shall apply to all clearing of rights of way across private land and on behalf of the state, county, highway districts and road districts, whether the work be done by day labor, or by contract, and unless unavoidable emergency prevents, provision shall be made by the proper officials conducting, directing, or letting said work for withholding until it is complete, a sufficient portion of the payment therefor to assure compliance with this act.

Violations of any of the provisions of this section shall be deemed a misdemeanor and be punishable by a fine of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000).

In addition to the penalty herein provided the offender may be enjoined, at the instance of the *department* from proceeding with such work until the provisions of this section shall have been complied with; and, upon application of the *department* to any court of competent jurisdiction, a writ of mandate shall issue compelling the offender to fully comply with the provisions thereof."

Section 29. Section 28-406, R.C.M. 1947, is amended to read as follows:

**"28-406. Purchaser will insure compliance, prior to purchase, will transmit withheld money to department — penalty.** The initial purchaser of forest products which have been cut or are about to be cut from any private lands within the state of Montana, shall before making such purchase or contract to purchase determine that the persons, firm or corporation engaged, or about to engage, in the cutting of these forest products, has provided for the reduction or management of the fire hazard thus created, as provided in sections 28-404 to 28-412. When the hazard reduction agreement provides that the purchaser of forest products shall withhold moneys to insure faithful compliance with sections 28-404 to 28-412, said purchaser will transmit any moneys which are withheld to the state forester.

Violation of any of the provisions of this section shall be deemed a misdemeanor and be punishable by a fine of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000)."

Section 30. Section 28-407, R.C.M. 1947, is amended to read as follows:

**"28-407. Disposal of slash — injunction against further cutting — disposal at expense of owner — lien and enforcement — orders.** In the event one responsible therefor shall fail, refuse or neglect to properly dispose of slash in accordance with the requirements of sections 28-404 and 28-406, and such person responsible therefor is engaged or is about to engage, either for himself or for another, in cutting timber or other forest products, and thereby creating a fire hazard anywhere within the state, he may be enjoined from cutting such timber and thereby creating a fire hazard until he shall have complied with the provisions of sections 28-404 and 28-406. Such injunction proceedings may be instituted by the *department* as plaintiff and the court may in its discretion grant a temporary injunction. In any such proceedings no bond shall be required of the plaintiff and such proceedings shall be handled with expedition in the district court of the county where the land is located.

If one responsible therefor has for any reason failed to comply with sections 28-404 and 28-406, and has without such compliance cut any forest products and shall fail, refuse, or neglect to obtain compliance for a period of thirty (30) days after being notified so to do by the *department*, the *department*, may, if it deems it advisable, complete, direct or authorize the disposal of such slash at the expense of the owner of the timber or other forest products cut or produced from the land upon which such fire hazard remains undisposed of as aforesaid.

The cost and expense of such disposal, plus twenty per cent (20%) of the cost and expense of such disposal as a penalty, shall constitute a lien upon the forest products so cut or produced from such land. If payment of the sum demanded be not made to the *department* within ten (10) days of such written demand, the *department* must transfer all papers relative to the unsatisfied demand for payment to the attorney general of the state, who shall bring legal action on behalf of the state to recover the debt.

The *department* shall not file for record any lien against the property

of any person who has been issued a certificate of compliance with sections 28-404 and 28-406, covering such property.

All orders and directions issued by the *department* as required by this section and section 28-404 shall be in writing and made in duplicate, the original of which shall be sent or delivered to the person to receive such orders, permits or directions; one copy shall be filed in the office of the *department*."

Section 31. Section 28-408, R.C.M. 1947, is amended to read as follows:

"28-408. **Supervision by department.** (1) The *department*, under such rules as the board of *natural resources and conservation* may provide, shall supervise the reduction or management of any fire hazard to the property of others created by the cutting of any forest product on private land in the state of Montana.

(2) The reduction or management of fire hazards referred to in this act shall be in keeping with modern and progressive forest practices and more effective fire control and may include or be limited to the taking of protective measures to prevent injury or the destruction of forest resources without actual abatement of the hazard."

Section 32. Section 28-410, R.C.M. 1947, is amended to read as follows:

"28-410. **Contracts with owners of forest lands.** The *department* is hereby authorized and empowered to enter into agreements with the owners of any forest lands or any operator engaged in operations on lands within the state of Montana whereby slash is created, and under said contract the *department* may assume all responsibility for the reduction or management of any fire hazard; any such contract shall provide the amount to be paid by the owner or operator to the *department* by reason of *its* agreement to assume the reduction or management, of such fire hazard. Said amount shall not exceed two dollars (\$2) for each one thousand (1000) feet log scale, or the equivalent thereof if forest products other than logs are cut."

Section 33. Section 28-411, R.C.M. 1947, is amended to read as follows:

"28-411. **Methods of reducing hazards — contracts with forest protective agencies.** The reduction or management of such fire hazards shall be carried on by the *department* and the state firewardens in keeping with modern and progressive forest practices and more effective fire control and the *department* is hereby authorized to enter into contracts with forest protective agencies, including agencies of the United States of America, for the reduction or management of such fire hazards when in *its* opinion the work can best be accomplished in that manner. The *department*, state firewardens, and recognized forest protective agencies, including any agency of the United States of America, with which the *department* has entered into an agreement for the reduction or management of any fire hazard as herein provided, and any officer or official of such agency, shall not be liable for any damage to the land, product,

improvement, or other things of value of whatsoever nature upon the lands on which the fire hazards are being managed or reduced in accordance with provisions of sections 28-408 to 28-412, when all requisite care and caution has been used and such work is being or has been performed in compliance with the rules provided in section 28-408."

Section 34. Section 28-412, R.C.M. 1947, is amended to read as follows:

"28-412. **Certificate of clearance.** Any owner or operator who has entered into a contract with the *department* for the reduction or management of any fire hazard and upon payment of the contract price in accordance with the terms of said contract and the full compliance with the terms of said contract by such owner or operator, shall be granted a certificate of clearance and be relieved of any and all further liability and responsibility for the removal or reduction of any such fire hazard; provided, however, the *department* may require a cash bond, equivalent to the contract price, and conditioned upon the faithful performance of said contract, be deposited by the owner or operator with the *department*."

Section 35. Section 46-2301, R.C.M. 1947, is amended to read as follows:

"46-2301. **Grass Conservation Act — cooperation on Taylor Grazing Act.** This act may be cited as the "Grass Conservation Act." Its purpose is to provide for the conservation, protection, restoration, and proper utilization of grass, forage and range resources of the state of Montana, to provide for the incorporation of *cooperative* nonprofit grazing districts, to provide a means of *cooperation* with the secretary of the interior as provided in the federal act known as the Taylor Grazing Act and any other governmental agency or department having jurisdiction over lands belonging to the United States or other state or federal agency as well as agencies having jurisdiction over federal lands, to permit the setting up of a form of grazing administration which will aid in the unification or control of all grazing lands within the state where the ownership is diverse and the lands intermingled, and to provide for the stabilization of the livestock industry and the protection of dependent commensurate ranch properties as defined herein. *The department of natural resources and conservation shall assist in carrying out the purposes of this act, act in an advisory capacity with the department of state lands and board of county commissioners, and supervise and coordinate the formation and operation of districts which may be incorporated under this act.*"

Section 36. Section 46-2302, R.C.M. 1947, is amended to read as follows:

"46-2302. **Definitions.** *Unless the context requires otherwise, in this act:*

(1) "*Department*" means *the department of natural resources and conservation provided for in Title 82A, chapter 15.*

(2) "*State district*" means a nonprofit *cooperative* organization incorporated under this act, and its board of directors. "*State district*" also includes all lands, owned or controlled by the state district or its members.



(3) "Range" is the land within a grazing district upon which grazing permits are granted to maintain livestock through the established grazing period.

(4) "Permits" are evidence of grazing privileges granted by state districts.

(5) "Grazing preference" is a right to obtain a grazing permit from a state district. It is attached to dependent commensurate property except as provided in this act.

(6) "Board" means the *board of natural resources and conservation provided for in section 82A-1509, except where the term is used in connection with the board of directors of a state district.*

(7) "Person" means a natural person or persons, unincorporated associations, partnerships, corporations and governmental departments or agencies.

(8) "Commensurate property" means land privately owned or controlled which is not range as herein defined.

(9) "Dependent commensurate property" is commensurate property which requires the use of range in connection with it to maintain its proper use, and which produces or whose owner furnishes as part of his past customary practice the proper feed necessary to maintain livestock during the time other than the established grazing period on the range, and which has been used in connection with the range for a period of any three (3) years or for any two (2) consecutive years in the *five (5) year period immediately preceding June 28, 1934; or in the case of districts organized after March 15, 1945, for a five (5) year period immediately preceding the date of organization of such districts.*

(10) "Animal unit" means one (1) cow, one (1) horse, or five (5) sheep, six (6) months old or over.

(11) "Assessment" means a special levy imposed on permittee members by the state district to raise funds for specific purposes as provided in paragraph 6, section 46-2312. "Assessment" does not include fees."

Section 37. Section 46-2307, R.C.M. 1947, is amended to read as follows:

**"46-2307. Powers of department and board — state districts. (1)**  
*(a) The department may prepare and standardize various forms to be used by the state districts, and supervise or regulate the organization and operation of state districts. If a state district or the directors of a state district fail to comply with an order of the department, the board may order a hearing thereon within the district or county and cite the directors of the district to appear before the board; if upon the hearing it appears that the directors refuse to perform the duties of their office as herein defined and as set forth in the articles of incorporation and the bylaws of the association, or refuse to comply with a lawful order of the department, the directors may be summarily removed by the board from office, and thereupon the district shall elect new officers. During the period until the election the department may operate and manage the affairs of the state dis-*

trict. The expense of operating and managing the affairs of a noncomplying state district shall be paid by *the* noncomplying state district before it *may* be reinstated.

(b) *If a state district ceases to function and it appears to the board that the reinstatement and future operation of the district is no longer feasible, beneficial and desirable to those who own or control more than fifty per cent (50%) of the lands included in the district, the board, after a hearing thereon, and, upon thirty (30) days' notice in writing, published for two (2) consecutive weeks in a newspaper of general circulation in or nearest to the district, may dissolve the district. A notice of the dissolution shall be filed by the department with the secretary of state and the clerk and recorder of the county or counties in which the district is located.*

(2) *The department may:*

(a) *Issue citations directed to any person requiring his attendance before the department or the board, and subpoena witnesses and pay such expenses as would be allowed in a court action.*

(b) *Require an officer or director of a state district to submit records of the state district to the department for the purpose of aiding an investigation conducted by the department.*

(c) *Hold hearings on any matters affecting the department.*

(d) *Require state districts to furnish itemized financial reports annually.*

(e) *Cooperate and enter into agreements on behalf of a state district, with its consent, with any governmental subdivision, department, or agency, in order to promote the purposes of this act."*

Section 38. Section 46-2308, R.C.M. 1947, is amended to read as follows:

**"46-2308. Appeals from decisions of state district to board — from board to district court.** (1) *Notice of a decision of a state district shall be given in writing by the secretary of the state district to the interested parties or their attorneys by registered mail at the address as shown on the records of the district.*

(2) *A person affected by the decision of a state district may appeal therefrom to the board which shall hear and decide all those appeals. An appeal from the decision of the district to the board may be taken by filing written notice of the appeal with the department and by filing a copy of the notice of appeal with the secretary of the district and by serving a copy of the notice of appeal by registered mail upon any interested parties who have appeared, or their attorneys, within sixty (60) days after receiving written notice of the decision of the district. The appellant shall also file with the department proof by affidavit of the filing and service of the notice of appeal. The appeal to the board shall be taken and review thereof had upon the record of any hearing conducted and considered by the state district; however, the board may, at its discretion, and for good cause shown, permit additional testimony to be submitted.*

Any person who chooses to become a member of any state district is bound by all the provisions of the Grass Conservation Act and is limited to the statutory remedies therein contained and no court shall have jurisdiction to consider any right claimed under such act excepting only by judicial review from the final decision of the commission as herein provided.

(3) *The Montana Administrative Procedure Act (Title 82, chapter 42, R.C.M. 1947) applies to this act.*"

Section 39. Section 46-2309, R.C.M. 1947, is amended to read as follows:

"46-2309. **Incorporation of state districts.** If three (3) or more persons who own or control commensurate property and are livestock operators within the area proposed to be created into a state district decide to incorporate a state district, they shall submit a statement in writing to the *department* together with a plat showing the proposed boundaries of the area. *The* statement shall set forth the name of the proposed state district; the county or counties in which *the* proposed state district is located; and the names and addresses of all operators of land and livestock units within *the* area. The *department* may require any additional information it *considers* necessary. On receipt of *the* statement and plat and *any* additional information, the *department* shall fix *a* time and place of a hearing for approval within the district or county, which *may* not be less than thirty (30) days or more than sixty (60) days after receipt of *the* statement. The persons deciding to incorporate *the* state grazing district shall then cause notice of *the* hearing to be given by publishing a notice prescribed by the *department* once a week for two (2) consecutive weeks, the first publication to be at least thirty (30) days prior to the date of hearing, in a newspaper of general circulation in *the* area. The *department*, for and on behalf of the *board*, shall hear evidence offered in support of, or in opposition to, the creation of *the* state district, and shall make a full inquiry into the advisability of *its* creation; the record taken upon the hearing, together with the report of the *department*, shall be submitted to the *board*. If the creation of *the* state district *appears* feasible, beneficial and desirable to those who own or control more than fifty per cent (50%) of the lands to be included in *the* district, the *board* may issue a certificate of approval."

Section 40. Section 46-2310, R.C.M. 1947, is amended to read as follows:

"46-2310. **Articles of incorporation, contents.** Upon the issuance of the certificate of approval, three (3) or more persons who own or control commensurate property and are livestock operators within or near the proposed state district may prepare articles of incorporation and file them in the *office* of the secretary of state without payment of fees; *the* articles *shall* be accompanied by the certificate of approval and signed, sealed, and acknowledged. *The* articles, as prescribed by the *department*, shall substantially state the following:

(1) The name of the state district, the last four (4) words of which shall be "*cooperative state grazing district.*"

(2) The county or counties in which *the* state district is located, and the place where the principal office and business of the state district will be conducted.

(3) The membership fee for each member of the state district which *may* not be more than five dollars (\$5).

(4) The term for which *the* state district is incorporated, which *may* not exceed forty (40) years.

(5) The names and residences of the persons who subscribe, together with a statement that each owns or controls commensurate property and is a livestock operator within the proposed state district.

(6) The powers of the state district, which *may* not be inconsistent with this act.

(7) The officers of the state district, their principal duties, and the principal duties of the board of directors.

(8) The purpose for which the state district is incorporated. If the articles substantially comply with the requirements set forth *in this section* and are accompanied by the certificate of approval, the secretary of state shall issue to *the* state district a certificate of incorporation. All amendments to articles of incorporation shall also be filed by the secretary of state without charge."

Section 41. Section 46-2311, R.C.M. 1947, is amended to read as follows:

"46-2311. **Map or plat of district to be filed.** A state district shall, upon completion of *its* organization, file with the county clerk of each county in which *its* lands lie, a map or plat of the external boundaries of *the* state district and a copy of *its* articles of incorporation. *If the boundaries of a state district are changed, and the changes are approved by the board after a hearing thereon before the department,* the state district shall file with the county clerk or clerks a map or plat indicating *the* changed boundaries. *If the articles of incorporation are amended, the amendment shall be filed with the county clerk or clerks. A person herding or in control of livestock in the approximate vicinity of a state district shall ascertain the boundary lines of the district."*

Section 42. Section 46-2312, R.C.M. 1947, is amended to read as follows:

"46-2312. **Powers of state districts.** A state district *may*:

(1) *Purchase* or market livestock and livestock products, *and* purchase supplies and equipment. *These* supplies may include among other things grass, grass seed, or forage, whether attached to and upon or severed from the land.

(2) *Sue* or be sued in its corporate name.

(3) *Acquire* forage producing lands by lease, purchase, *cooperative* agreements, or otherwise, either from the United States, the state of Montana, county or counties in which *the* lands are located, or from pri-

vate owners. All lands to which a state district may acquire title may be disposed of by exchange, sale or otherwise.

(4) *Manage* and control the use of its range. This power *includes* the right to determine the size of preferences and permit according to a fixed method which shall be stated in the bylaws and which shall take into consideration the rating of dependent commensurate property and the carrying capacity of the range, and may be subject to reservations, regulations and limitations under the terms of agreements between the state district and any agency of the United States. *The state district may also allot range to members or nonmembers, and decrease or increase the size of permits if the range carrying capacity changes.*

(5) *Acquire* or construct fences, reservoirs, or other facilities for the care of livestock, and lease or purchase lands for such purposes.

(6) *Fix* and determine the amount of grazing fees to be imposed on members or nonmembers for the purpose of paying leases and operating expenses *and fix and determine the amount of assessments* to be made on members on an animal unit basis for the purpose of acquiring lands by purchase, or for the purpose of constructing improvements in *the* state district.

(7) *Specify* the breed, quality, and number of male breeding animals which each member must furnish when stock is grazing in common in the state district.

(8) *Employ* and discharge employees, riders, and other persons necessary to properly manage the state district.

(9) *Set up* and maintain a reasonable reserve fund.

(10) *Borrow* money, and if necessary mortgage the physical assets of a state district to provide for operation and development, provided that at least eighty per cent (80%) of the permittee members of the state district consent in writing to *the borrowing and the borrowing has been approved by the department. This subsection does not confer* power upon a state district to mortgage the property of the individual members of the district.

(11) *Change* the boundaries of a district, merge with another state district organized under this act, or subdivide.

(a) *A merger may not* be made unless consented to by a majority of the members of each merging state district and approved by the *board after a hearing thereon before the department.*

(b) *A subdivision may not* be made unless consented to by a majority of the members in the affected area and approved by the *board after a hearing thereon before the department.*

(12) *Regulate* the driving of stock over, across, into, or through the range, and collect fees therefor. *A state district may impose* sanitary provisions, regulations and practices.

(13) *Undertake* reseeding and other approved conservation and improvement practices of depleted range areas or abandon farm lands and

enter into *cooperative* agreements with the federal government or any other *person* for *the* reseeding or conservation and improvement practices."

Section 43. Section 46-2313, R.C.M. 1947, is amended to read as follows:

"46-2313. **Powers and duties of directors.** The directors of the state district shall manage and exercise the powers of *the* state district subject to its bylaws and to the regulation of the *department* as provided in this act."

Section 44. Section 46-2314, R.C.M. 1947, is amended to read as follows:

"46-2314. **Membership in district.** (1) Membership in the district is limited to persons engaged in the livestock business who own or lease forage producing lands within or near the district, except that the agent of a person entitled to membership in the district may become a member in place of his principal. If *an* agent becomes a member his qualifications for membership and his obligations to and the privileges in the district shall be measured by those his principal would have had if he had elected to become a member. *An* agent and his principal *may not* both be of the district unless *the* agent has individual qualifications for membership which are separable from and independent of those of his principal. Permittee members only *are* entitled to vote on all issues submitted to a vote of the members. *A permittee* member *has only one* (1) vote. Voting by proxy *may not* be permitted. All members who possessed preferential grazing permits during the preceding grazing season or who possess such a permit at the time of voting shall be designated as permittee members.

(2) When a member *disposes* of a part of the lands or leases owned by him so that another *person becomes* the owner of *the* lands or leases and *acquires* the right to membership, then the rights and interest involved shall be determined by the directors of the state district with the approval of the *department*.

(3) Preferences or rights under this act through the creation of the district or the issuance of permits or preferences are statutory and *do not* create any vested right, title, interest or estate in or to the lands owned or controlled by the district excepting as herein provided."

Section 45. Section 46-2315, R.C.M. 1947, is amended to read as follows:

"46-2315. **Bylaws.** A state district incorporated under this act shall within sixty (60) days after its incorporation adopt bylaws approved by the *department*. The bylaws may be amended or revised with the approval of the *department*."

Section 46. Section 46-2316, R.C.M. 1947, is amended to read as follows:

"46-2316. **District must lease available state land.** *State* land situated within the boundaries of a grazing district created *under* this act, not otherwise disposed of by the *department of state lands*, must be leased by *the* grazing district at a reasonable rental, when offered for lease to

the officers of *the* grazing district by *that department*; however, the officers of *the* grazing district may appear or submit evidence in writing before the *department of state lands* and show reason and cause for a change in *the* rental. If *there is cause*, the *department of state lands* may *reappraise* the land in question. *The department of natural resources and conservation shall* require that all state districts comply with this section."

Section 47. Section 46-2317, R.C.M. 1947, is amended to read as follows:

"46-2317. **Department to advise department of state lands and county commissioners.** The *department* may act in an advisory capacity to the *department of state lands* and *boards* of county commissioners for the purpose of working out uniform plans for the use of lands lying within or without the boundaries of *state* districts, in conformity with recognized conservation and stabilization policies."

Section 48. Section 46-2318, R.C.M. 1947, is amended to read as follows:

"46-2318. **Amending articles of incorporation.** (1) A *state* district may amend its articles of incorporation by a two-thirds ( $\frac{2}{3}$ ) vote of all members present at any regular or special meeting of its members and the approval of the *department*; the only notice of *the* meeting which is necessary is the notice of meetings of members as required by the bylaws of *the* district. *The* amended articles of incorporation and bylaws shall be submitted to the *department* for approval. Upon approval, the *department* shall issue a *certificate* of approval. *The* amended articles of incorporation shall be filed by the secretary of state without charge, but *may* not be filed unless accompanied by *the* certificate of approval.

(2) Upon the filing of *the* amended articles with the secretary of state and the proper county clerk or clerks, *the* district *possesses* the same powers and shall be subject to the same obligations as if incorporated under this act."

Section 49. Section 46-2322, R.C.M. 1947, is amended to read as follows:

"46-2322. **Grazing preferences appurtenant to dependent commensurate property and commensurate property and method of transferring preferences to other lands.** (1) Grazing preferences run with and *are* appurtenant to the dependent commensurate and commensurate property upon which they are based. They *are not* subject to devise, bequest, attachment, execution, lease, sale, exchange, transfer, pledge, mortgage, or other process, or transaction, except as provided in this section or in the bylaws of a state district. Upon application by a permittee, the state district with the approval of the *department* may allow a preference based on ownership or control of dependent commensurate or commensurate property to be transferred to other property of sufficient commensurability; *however*, in any transfer of preference from dependent commensurate or commensurate property controlled but not owned by *the* applicant, the applicant must have had control and use of the dependent commensurate or commensurate property and the preference appurtenant thereto for five (5) consecutive years and must have established and main-

tained the livestock operation upon which the dependency was established by use or priority immediately prior to the application for transfer. *In addition, the transfer may not interfere with the stability of livestock operations or with proper range management and may not affect adversely the established local economy. A transfer may not be allowed without the written consent of the owner or owners and any encumbrances of the dependent commensurate or commensurate property from which the transfer is to be made, and a transfer is not effective until approved by the department. This section does not apply to trespass violations.*

(2) When an application for transfer is presented to the board of directors of a state district, the secretary upon the direction of that board shall give notice thereof, setting forth in general the application and the time and place of a hearing thereon as fixed by the board. A copy of the notice shall be given or mailed to the applicant and shall be published for at least once a week for two (2) successive weeks prior to the hearing in a newspaper published or generally circulated within the district, and the notice shall also be posted for at least two (2) full weeks prior to the hearing in three (3) public places within the district. The date of hearing must be at least fifteen (15) days from the first publication of the notice. At the hearing the directors shall fully hear and determine the application and any objections thereto.

(3) Upon the allowance of a transfer under this section, the property from which the transfer is made loses its grazing preference to the extent of the preference transferred.

(4) All expenses involved under the application shall be borne by the applicant.

(5) When the land to which a preference is attached changes its control or ownership the preference changes with the land, and the person to which the control or ownership changes shall secure a nonuse permit or shall pay the usual grazing fees. If the person fails to secure a nonuse permit or refuses to pay the grazing fees, the preferences may be revoked by the state district. If a person controls but does not own land and does not secure a nonuse permit and refuses to pay grazing fees, the state district shall notify the owner of the land by registered mail that the preference attached to the land will be revoked unless the owner pays the usual grazing fees to the state district within sixty (60) days from the time of receipt of the notice. The state district may revoke the preference if the owner or mortgagor does not pay the fees or secure a nonuse permit.

(6) If a permittee fails to pay grazing fees or assessments levied by the state district, or fails to obtain a nonuse permit or violates any of the rules and regulations of the state district, the state district may notify the permittee and owner of the land by registered mail that the preference attached to the land will be revoked unless the grazing fees or assessments are paid or the permittee ceases to violate the rules and regulations laid down by the district within sixty (60) days from the time of receipt of the notice. The state district may revoke the preference if the permittee or owner fails to pay the charges or comply.

(7) When a preference is revoked, it is detached from the dependent



commensurate or commensurate property to which it was formerly appurtenant, *and it immediately shifts* to the state district. The state district may then allocate it to either dependent commensurate or commensurate property in the manner provided by its bylaws.

(8) In all cases where notices are given permittees under this act by registered mail and addressed to the post-office address of *the* permittee as shown by the records of *the* state district, *the* notices shall be *considered* received by the permittee when deposited in the United States post office by the district or by the *department*."

Section 50. Section 46-2323, R.C.M. 1947, is amended to read as follows:

**"46-2323. Subsequent lessees to compensate district for range improvements.** Subsequent lessees or owners of land shall compensate a state district for the value of range improvements constructed with the consent of the owner, upon lands leased by the state district. *The* value shall be the value at the expiration date of the lease. *If* the owner and the state district cannot agree as to *the* value, the state district may either remove or abandon *the* improvement. *If* the subsequent lessee and the state district cannot agree as to *the* value, it shall be fixed by the *department*."

Section 51. Section 46-2325, R.C.M. 1947, is amended to read as follows:

**"46-2325. Dissolution of district.** A state district with the written consent of three-fourths ( $\frac{3}{4}$ ) of its permittee members may at any time request the *board of natural resources and conservation to dissolve* the state district. When *a hearing thereon has been held before the department and the board's* consent has been given, the directors shall distribute the assets of the state district, either in items of property or in cash or in both. Distribution shall first be made *with the approval of the department* to creditors up to the amount of their claims. Distribution shall then be made *with the approval of the department* to permittee members upon the basis of their proportionate interest in *the* assets. If assets must be liquidated, the directors shall offer *them* for sale at public auction after publication of a notice of *the* sale once a week for two (2) successive weeks in a newspaper of general circulation within the state district. A final report of all dissolution proceedings shall be made to the *department* by the directors. Upon the approval of *the* report by the *department*, the board shall order *the* state district dissolved."

Section 52. Section 46-2331, R.C.M. 1947, is amended to read as follows:

**"46-2331. Fees may be imposed by department against districts.** The *department* may impose fees against the several state grazing districts of the state in an amount not in excess of ten cents (\$.10) per animal unit, based upon the number of animal units per year for which the district grants permits, to defray expenses *incurred* by the *department in carrying out its powers and duties under this act*. These fees shall be held in the earmarked revenue fund, to be expended by order and direction of the *department* for the administration of the *department's functions*

*under this act. If a state district fails or refuses to pay the fee on or before the first day of October of each year, and after the district is provided with a full report from the department of all moneys collected and expended by it for its fiscal year next preceding that date, the department may compel and levy collection and payment by writ of mandate or other appropriate remedy against the state district."*

Section 53. Section 46-2332, R.C.M. 1947, is amended to read as follows:

**"46-2332. Range for wild game animals.** In each state district a sufficient carrying capacity of range *shall* be reserved for the maintenance of a reasonable number of wild game animals, to use the range in common with livestock grazing in the district. The *department* may act in an advisory capacity to the *department of fish and game* in the protection of wild-life within the boundaries of all *state* districts. The *department* shall encourage the transfer of beaver from streams where they are doing damage to other streams where they are needed."

Section 54. Section 60-124, R.C.M. 1947, is renumbered 60-127.1, and is amended to read as follows:

**"60-127.1. Waste of oil and gas prohibited.** Waste of oil and gas or either of them as waste is defined in this *chapter*, is prohibited."

Section 55. Section 60-126, R.C.M. 1947, is amended to read as follows:

**"60-126. Definitions.** As used in this *chapter*, unless the context *requires* otherwise:

(1) "Waste" means: (1) physical waste, as that term is generally understood in the oil and gas industry; (2) the inefficient, excessive, or improper use of, or the unnecessary dissipation of reservoir energy; (3) the location, spacing, drilling, equipping, operating or producing of any oil or gas well or wells in a manner which causes, or tends to cause, reduction in the quantity of oil or gas ultimately recoverable from a pool under prudent and proper operations, or which causes or tends to cause unnecessary or excessive surface loss or destruction of oil or gas; and, (4) the inefficient storing of oil or gas. *The* production of oil or gas from any pool or by any well to the full extent that *the* well or pool can be produced in accordance with methods designed to result in maximum ultimate recovery, as determined by the *board*, is not waste within the meaning of this definition.

(2) "Board" means the *board of oil and gas conservation provided for in section 82A-1508*.

(3) "Person" means any natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind, and includes any agency or instrumentality of the state or any governmental subdivision thereof.

(4) "Oil" means crude petroleum oil and other hydrocarbons regardless of gravity which are produced at the wellhead in liquid form by ordinary production methods, and which are not the result of condensation of gas before or after it leaves the reservoir.

(5) "Gas" means all natural gases and all other fluid hydrocarbons as produced at the wellhead and not defined as oil *in subsection (4) of this section*.

(6) "Pool" means an underground reservoir containing a common accumulation of oil or gas or both; each zone of a structure which is completely separated from any other zone in the same structure is a pool, as that term is used in this *chapter*.

(7) "Field" means the general area underlaid by one (1) or more pools.

(8) "Owner" means the person who has the right to drill into and produce from a pool and to appropriate the oil or gas he produces therefrom either for himself or others or for himself and others, and *the term includes* all persons holding such authority by or through him.

Nothing herein contained shall be construed to conflict with subsection (4) of section 81-1702, granting *the* state board of land commissioners the authority to enter into pooling and unitization agreements for the production of oil or gas with others.

(9) "Producer" means the owner of a well or wells capable of producing oil or gas or both.

(10) "Department" means *the department of natural resources and conservation provided for in Title 82A, chapter 15.*"

Section 56. Section 60-127, R.C.M. 1947, is amended to read as follows:

"60-127. **Powers and duties of board.** (1) The board shall make such investigations as it *considers* proper to determine whether waste exists or is imminent or whether other facts exist which justify any action by the board under the authority granted by this *chapter* with respect thereto.

(2) *Subject to the administrative control of the department under section 82A-108, the board shall:*

(a) *Require:* (i) identification of ownership of oil or gas wells, producing properties and tanks; (ii) the making and filing of acceptable well logs, reports on well locations, and the filing of directional surveys, if made, however, logs of exploratory or wildcat wells need not be filed for a period of six (6) months following completion of *those* wells; (iii) the drilling, casing, producing and plugging of wells in such manner as to prevent the escape of oil or gas out of one stratum into another, the intrusion of water into oil or gas stratum, blowouts, cavings, seepages, and fires, and the pollution of fresh water supplies by oil, gas, salt, or brackish water; (iv) the furnishing of a reasonable bond with good and sufficient surety, conditioned for performance of the duty to properly plug each dry or abandoned well; (v) proper gauging or other measuring of oil and gas produced and saved to determine the quantity and quality thereof; and (vi) that every person who produces, transports or stores oil or gas in this state shall make available within this state for a period of five (5) years complete and accurate records of the quantities thereof, which records shall be available for examination by the board or its employees at all reasonable

times, and that *that* person file with the *board* such reports as it may prescribe with respect to quantities, transportations, and storages of *the* oil or gas.

(b) For the purpose of preventing waste, (i) regulate the drilling, producing and plugging of wells, the shooting and chemical treatment of wells, the spacing of wells, operations voluntarily entered into to increase ultimate recovery such as cycling of gas, the maintenance of pressure, and the introduction of gas, water, or other substances into producing formations, and, (ii) fix, upon application made by any interested person after hearing, efficient gas-oil and water-oil ratios for any particular well or wells.

(c) *Regulate the disposal of salt water and oil field wastes.*

(d) *Classify wells as oil or gas wells for purposes material to the interpretation or enforcement of this chapter.*

(e) *Adopt and enforce rules and orders to effectuate the purposes and the intent of this chapter.*

(3) The *board* shall determine and prescribe what producing wells shall be defined as "stripper wells" and what wells shall be defined as "wild cat wells," and make such orders as in its judgment *are* required to protect *those* wells, and provide that stripper wells may be produced to capacity if it is *considered* necessary in the interest of conservation to do so.

(4) With respect to any pool from which gas was being produced by a gas well on or prior to *April 1, 1953*, this *chapter does not* authorize the *board* to limit or restrain the rate (daily or otherwise) of production of gas from *that* pool by any well then or *thereafter* drilled and producing from *that* pool to less than the rate at which *the* well can be produced without adversely affecting the quantity of gas ultimately recoverable by *the* well."

Section 57. Section 60-128, R.C.M. 1947, is amended to read as follows:

"60-128. **Notice of intention to drill.** It is unlawful to commence the drilling of a well for oil or gas without first *filing with the board* written notice of intention to drill, and obtaining a drilling permit as provided in *section 60-145(4).*"

Section 58. Section 60-129, R.C.M. 1947, is amended to read as follows:

"60-129. **Well spacing units — orders.** (1) To prevent or to assist in preventing waste of oil or gas prohibited by this *chapter*, the *board*, upon its own motion or upon application of *an* interested person, after hearing, may by order establish well spacing units for a pool, as to oil wells or as to gas wells or both, except in those pools which, prior to *April 1, 1953*, have been developed to such an extent that it would be impracticable or unreasonable to establish spacing units at the existing stage of development. Spacing units when established shall in so far as possible be of uniform size and shape for the entire pool.

(2) The size and the shape of spacing units *shall* be such as will result in the efficient and economic development of the pool as a whole, and the size shall be the area that can be efficiently drained by one (1) well.

(3) Subject to this *chapter*, the order establishing spacing units shall direct that no more than one (1) well *may* be drilled and produced from the common source of supply on any spacing unit, and that the well shall be drilled at a location authorized by the order, with such exception as may be reasonably necessary where it is shown, upon application, notice, and hearing, and the *board* finds, that the spacing unit is located on the edge of a pool or field and adjacent to a producing unit, or, for some other reason, the requirement to drill the well at the authorized location on the spacing unit would be inequitable or unreasonable.

(4) An order establishing spacing units for a pool shall cover all lands then determined or then believed to be underlaid by *the* pool and may be modified after notice and hearing by the *board* from time to time to include additional areas subsequently determined to be underlaid by *the* pool. When found necessary for the prevention of waste, an order establishing spacing units in a pool may be modified after notice and hearing by the *board* to increase or decrease the size of spacing units in the pool, or to permit the drilling of additional wells on a reasonably uniform plan in the pool."

Section 59. Section 60-130, R.C.M. 1947, is amended to read as follows:

**"60-130. Pooling of interest within spacing unit — voluntary or on order of board after hearing — contents of order.** (1) When two (2) or more separately owned tracts are embraced within a spacing unit, or when there are separately owned interests in all or a part of the spacing unit, then the persons owning *those* interests may pool their interests for the development and operation of the spacing unit. In the absence of voluntary pooling, within the spacing unit, the *board*, upon the application of *an* interested person, may enter an order pooling all interests in the spacing unit for the development and operation thereof. *The* pooling order shall be made after hearing, and shall be upon terms and conditions that are just and reasonable, and that afford to the owner of each tract or interest in the spacing unit the opportunity to recover or receive, without unnecessary expense, his just and equitable share of the oil or gas produced and saved from *the* spacing unit. Operations incident to the drilling of a well upon any portion of a spacing unit covered by a pooling order shall be *considered*, for all purposes, the conduct of *the* operations upon each separately owned tract in the spacing unit by the several owners thereof. That portion of the production allocated to each tract included in a spacing unit covered by a pooling order shall, when produced, be *considered* for all purposes to have been produced from *the* tract by a well drilled thereon.

(2) *The* pooling order shall *provide* for the drilling and operating of a well on the spacing unit, and for the payment of the cost thereof, which cost may include a reasonable charge for supervision, handling and storage. As to each owner who refuses to pay his share of the costs of drilling and operating the well, the order shall provide for payment of his share

of the cost out of, and only out of, production from the well allocable to his interest in the spacing unit, excluding royalty or other interest not obligated to pay any part of the cost thereof. *If a dispute arises as to the cost, the board by order shall determine the proper cost.* The order may provide in substance that the owners who agree to share in the cost of drilling and operating the well *are*, unless they agree otherwise, entitled to receive, subject to royalty or similar obligations, all of the production of the well until they have recovered all of *the* costs out of *the* production and thereafter all of the owners in *the* spacing unit *are* entitled to receive their respective shares of the production of *the* well as their interest may appear after deducting their respective shares of current operating costs."

Section 60. Section 60-131, R.C.M. 1947, is amended to read as follows:

**"60-131. Agreements for development and operation of pool — not in violation of state antitrust laws when approved by board.** An agreement for the unit or *cooperative* development and operation of a field or pool or any part of either, or for conducting repressuring or pressure maintenance operations, cycling or recycling operations, including the extraction and separation of liquid hydrocarbons from natural gas in connection therewith, or any other method of unit or *cooperative* operation, including water flooding, is authorized and may be performed. Such an agreement *does* not violate any of the statutes of this state relating to trusts, monopolies or contracts and combinations in restraint of trade if the agreement is approved by the *board* as being in the public interest and reasonably necessary to increase ultimate recovery or to prevent waste of oil or gas."

Section 61. Section 60-131.1, R.C.M. 1947, is amended to read as follows:

**"60-131.1. Operation of pool as unit — board to hold hearing — notice.** (1) The *board*, upon the application of persons owning leasehold interests underlying sixty per cent (60%) of the surface within the delineated area, shall hold a hearing to consider the need for the operation as a unit of one (1) or more pools or parts thereof in a field, for pressure maintenance or secondary recovery purposes as to oil or oil and gas, to increase ultimate recovery, or to prevent waste of gas from pools or portions of pools where gas only is produced.

(2) At least sixty (60) days prior to application, the applicant shall, by registered or certified mail, notify all known persons owning an interest in the oil and gas within the proposed unit area as disclosed by the records of the county or counties in which the proposed unit area is situated, at *that person's* last known address, of *the* applicant's intention to make *the* application. At the same time producers *shall* be furnished with a plan of unit operations. Upon written request of *an* operator of a lease which is in whole or in part within the confines of the proposed delineated area, *the* applicant *shall* furnish *the* operator with copies of any exhibits to be submitted to the *board* at the time of hearing."

Section 62. Section 60-131.2, R.C.M. 1947, is amended to read as follows:

"60-131.2. **Board order — criteria.** The *board* shall make an order providing for the unit operation of a pool or pools or part thereof if it determines, based on evidence presented at *the* hearing, that:

(1) Such operation is reasonably necessary to increase the ultimate recovery of oil or gas;

(2) The value of the estimated additional recovery of oil or gas less royalties or, as to gas pools only, the value of the economies to be effected, exceeds the estimated additional cost incident to conducting such operations; and

(3) The full areal extent of *the* pool or pools or part thereof has been reasonably defined and determined by drilling operations."

Section 63. Section 60-131.3, R.C.M. 1947, is amended to read as follows:

"60-131.3. **Terms and conditions of order — requirements.** The order shall be upon terms and conditions that are just and reasonable and shall prescribe a plan for unit operations that shall include:

(1) A description of the pool or pools or parts thereof to be so operated, termed the unit area, but only so much of a pool as has reasonably been defined and determined by drilling operations to be productive of oil or gas may be included within the unit area. *If* the unit is formed solely for production of gas, a spacing unit on which is located a well producing or capable of producing gas on *March 1, 1971, may not* be included in the unit area without the written consent of the majority in interest of the working interest owners of *the* spacing unit and well.

(2) A statement of the nature and purpose of the plan and operations contemplated, together with a copy of the proposed unit agreement and unit operating agreement.

(3) A plan for allocating to each tract in the unit area its fair share of the oil and gas produced from the unit area and not required or consumed in the conduct of the operation of the unit area or unavoidably lost. A plan *may not* be approved by the *board* until *it* has considered the relative value that *the* share of production bears to the relative value of all of the separately owned tracts in the unit area, exclusive of physical equipment utilized in unit operations. In considering *this* relative value, the *board* shall weigh the economic value of the gas to all persons affected as compared to the economic value of the oil to all persons affected.

(4) A provision for the credits and charges to be made in the adjustment among the owners in the unit area for their respective investments in wells, tanks, pumps, machinery, materials, and equipment contributed to the unit operations.

(5) A provision providing how the costs of unit operations, including overhead and capital investments, shall be determined and charged to the separately owned tracts, including a provision for carrying or otherwise financing any owner who has not executed the proposed unit operating agreement and who elects to be carried or otherwise financed, allowing an interest charge of the then current prime rate plus two per cent (2%)

for *the* service. Recovery of the money advanced, plus interest, shall be limited to, and only shall be recoverable from, *the* owners' share of production. *The* recovery shall be as follows:

(a) (1) In the case of a field producing oil, or oil and gas, during the period of depletion of the remaining estimated primary reserves from the unit, only from the production that is in excess of *the* owners' average actual rate of production during the eighteen (18) months immediately preceding the effective date of the unit. For purposes of this subsection, the term "primary reserves" means the oil or gas which would be produced from the unitized pool or pools or a result of the natural energy therein and without the introduction of a secondary recovery program.

(2) During the period subsequent to the depletion of the remaining estimated primary reserves from the unit, from one hundred per cent (100%) of *the* owners' share of production.

(b) In the case of a field producing only gas, the recovery shall be from one hundred per cent (100%) of *the* owners' share of production.

(6) A provision for the supervision and conduct of the unit operations, in respect to which each owner shall have a vote with a value corresponding to the percentage of the costs of unit operations chargeable against the interest of *the* owner.

(7) A provision whereby the unit operator, after having operated for a minimum period of two (2) years, can be challenged by any other owner in the unit, and *the* challenging owner may succeed to the unit operations upon a showing that: (a) he can operate more efficiently and economically than the present operator; (b) he is qualified and financially responsible; (c) a majority of the other owners, both in number and in percentage and exclusive of the challenged operator, approved *the* challenging owner becoming unit operator; and, (d) the challenged operator does not initiate the conditions of operations of the challenging owner within sixty (60) days of the challenged operator's receipt of *the* conditions of operations.

(8) The time when the unit operations shall commence, and the manner in which, and the circumstances under which, the unit operations shall terminate; and

(9) Such additional provisions that are found to be appropriate for carrying on unit operations and for the protection and adjustment of correlative rights."

Section 64. Section 60-131.4, R.C.M. 1947, is amended to read as follows:

**"60-131.4. Plan for unit operations — approval by those paying costs required — conditions for approval.** An order of the *board* providing for unit operations *may not* become effective unless and until the plan for unit operations prescribed by the *board* has been approved in writing by those persons who, under the *board's* order, will be required to pay at least eighty per cent (80%) of the costs of the unit operations, and also by the persons owning at least eighty per cent (80%) of the production or proceeds thereof that will be credited to interests which are free of cost, such as royalties, overriding royalties, and production pay-



ments, and the *board* has made a finding, either in the order providing for unit operations or in a supplemental order, that the plan for unit operations has been so approved; however, if one (1) owner who is obligated to pay costs of the unit operation owns eighty per cent (80%) or more, but less than one hundred per cent (100%), the approval of that owner and at least one (1) other such owner is required, and if one (1) person entitled to production or proceeds thereof that will be credited to interests which are free of costs, owns eighty per cent (80%) or more, but less than one hundred per cent (100%), the approval of that person and at least one (1) other such person is required. If the plan for unit operations has not been so approved at the time the order providing for unit operations is made, the *board* shall, upon application and notice, hold such supplemental hearings as may be required to determine if and when the plan for unit operations has been so approved. If the requisite number of owners and persons and the requisite percentage of interests in the unit area do not approve the plan for unit operations within a period of six (6) months from the date on which the order providing for unit operations is made, *the board shall revoke the order unless for good cause shown the board extends the time.*"

Section 65. Section 60-131.5, R.C.M. 1947, is amended to read as follows:

"60-131.5. **Amendment of board order — conditions.** An order providing for unit operations may be amended by an order made by the *board* in the same manner and subject to the same conditions and notice as an original order providing for unit operations, *however*, (a) if such an amendment affects only the rights and interests of the owners, the approval of the amendment by the persons owning interest which are free of costs, such as royalties, overriding royalties and production payments, is not required, and (b) *an order of amendment may not change the percentage for the allocation of oil and gas as established for any tract by the original order, except with the consent of all persons owning oil and gas rights in the tract, or change the percentage for the allocation of cost as established for any tract by the original order, except with the consent of all owners in the tract.*"

Section 66. Section 60-131.6, R.C.M. 1947, is amended to read as follows:

"60-131.6. **Units established by previous order may be included — manner of inclusion.** The *board*, by an order, may provide for the unit operation of a pool or pools or parts thereof that embrace a unit established by an order of the *board* made prior to *February 13, 1969*. The order, in providing for the allocation of unit production, shall first treat the unit area previously established as a single tract, and the portion of the unit production so allocated thereto shall then be allocated among the tracts included in the previously established unit area in the same proportions as those specified in the previous order. Any new owner whose interest by the order is added to the unit area and who becomes liable for his proportionate share of the costs of unit operations is not liable for any unit operating costs incurred prior to the person's entry in the unit. At the time the interest is included in the unit, an equipment inventory shall be made in order to charge the newly committed interest with its propor-

tionate share of capital investment at its then value. An oil-in-storage inventory *shall* be taken immediately prior to adding the newly committed interest."

Section 67. Section 60-131.8, R.C.M. 1947, is amended to read as follows:

"60-131.8. **Presumptions — compliance with board order constitutes fulfillment of lease or contract obligations.** All operations, including, but not limited to, the commencement, drilling, or operation of a well upon any portion of the unit area, shall be *considered* for all purposes the conduct of *those* operations upon each tract in the unit area by the several owners thereof. The portion of the unit production allocated to a tract in a unit area shall, when produced, be *considered*, for all purposes, to have been actually produced from *the* tract by a well drilled thereon. Operations conducted pursuant to an order of the *board* providing for unit operations shall constitute a fulfillment of all the express or implied obligations of each lease or contract covering lands in the unit area to the extent that *the* obligations cannot be performed because of the order of the board."

Section 68. Section 60-131.10, R.C.M. 1947, is amended to read as follows:

"60-131.10. **Contract relating to tract not terminated by board order.** A division order or other contract relating to the sale or purchase or production from a tract *may not* be terminated by the order providing for unit operations, but shall remain in force and apply to oil and gas allocated to *the* tract until terminated in accordance with the provisions thereof."

Section 69. Section 60-131.11, R.C.M. 1947, is amended to read as follows:

"60-131.11. **Title to oil and gas rights not affected by board order — allocation of property.** Except to the extent that the parties affected so agree, *an* order providing for unit operations *does not* result in a transfer of all or any part of the title of any person to the oil and gas rights in any tract in the unit area. All property, whether real or personal, that may be acquired in the conduct of unit operations hereunder shall be acquired for the account of the owners within the unit area, and shall be the property of *those* owners in the proportion that the expenses of unit operations are charged."

Section 70. Section 60-131.12, R.C.M. 1947, is amended to read as follows:

"60-131.12. **Trade not restrained by unit operations.** The formation of a unit as provided in *sections 60-131.1 through 60-131.13* and the operation of the unit under order of the *board* shall not be in violation of any statute of this state relating to trusts, monopolies, contracts or combinations in restraint of trade."

Section 71. Section 60-132, R.C.M. 1947, is amended to read as follows:

**"60-132. Administrative Procedures Act — orders — notice.** (1) *The Montana Administrative Procedure Act (Title 82, chapter 42, R.C.M. 1947) applies to this chapter.*

(2) *An order, or amendment thereof, except in an emergency, may not be made by the board without a public hearing upon at least ten (10) days' notice. The public hearing shall be held at such time and place as may be prescribed by the board, and any interested person is entitled to be heard.*

(3) *When an emergency requiring immediate action is found to exist, the board may issue an emergency order without advance notice or hearing, which shall be effective upon promulgation. An emergency order may not remain in effect more than fifteen (15) days.*

(4) *If notice is required by the chapter and the Montana Administrative Procedure Act does not apply, the notice shall be made by publication in one (1) or more issues of a newspaper in general circulation in Helena and a newspaper of general circulation in the county where the land or some part thereon is situated, and the board may also cause publication to be made in a trade journal or bulletin of general circulation in the oil and gas industry in the state.*

(5) *Proof of service by publication under subsection (4) shall be made by the affidavit of the printer or publisher of the newspaper, trade journal, or bulletin in which the notice is published, or by a foreman or principal clerk of the newspaper, bulletin or trade journal. (6) Except as provided otherwise in this chapter, the board may act upon its own motion, or upon the petition of an interested person. On the filing of a petition concerning a matter within the jurisdiction of the board, the board shall promptly fix a date for a hearing thereon, and shall cause notice of the hearing to be given. The hearing shall be held without undue delay after the filing of the petition. The board shall enter its order within thirty (30) days after the hearing."*

Section 72. Section 60-133, R.C.M. 1947, is amended to read as follows:

**"60-133. Subpoena power of board — chapter does not abrogate civil actions — enforcement of chapter when board fails to enjoin violations.** (1) *If the Montana Administrative Procedure Act does not apply, the board may subpoena witnesses, administer oaths, and require the production of records, books, and documents for examination at any hearing or investigation conducted by it. Witnesses subpoenaed under this subsection shall be paid the same per diem and mileage as is provided to be paid to witnesses attending the district courts of this state.*

(2) *This chapter, a suit by or against the board, a violation charged or asserted against a person under this chapter, or a rule or order issued under this chapter, does not impair, abridge, or delay a cause of action for damages or other civil remedy, which a person may have or assert against a person violating this chapter, or a rule or order issued under it. A person so aggrieved by the violation may sue for and recover such damages or relief as he otherwise may be entitled to receive. If the board fails to bring suit to enjoin a violation or threatened violation of this chapter, or a rule or order of the board within ten (10) days after receipt*

of written request to do so by *a* person who is or will be adversely affected by *the* violation, the person making *the* request may bring *the* suit in his own behalf to restrain *the* violation or threatened violation in *a* court in which the *board* might have brought suit. The *board* shall be made a party defendant in *the* suit in addition to the person violating or threatening to violate this *chapter*, or a rule or order of the *board*, and the action shall proceed and injunctive relief may be granted without bond in the same manner as if suit had been brought by the *board*.

(3) *If a person fails or refuses to comply with the subpoena issued by the board or if a witness refuses to testify as to any material matter regarding which he may be interrogated, any district court in the state, upon good cause shown by the application of the board, may issue a warrant of attachment for the person and if after hearing the court finds his failure or refusal to be unjustified, compel him to comply with the subpoena, and to attend before the board and produce any subpoenaed records, books, and documents for examination, and to give his testimony. The court may punish for contempt as in the case of disobedience to a like subpoena issued by the court, or for refusal to testify therein.*

Section 73. Section 60-134, R.C.M. 1947, is amended to read as follows:

"60-134. **Rehearing.** A person adversely affected by *a* rule or order of the *board* may within twenty (20) days after its effective date apply to the *board* in writing for a rehearing. The application for rehearing shall be acted upon within ten (10) days after its filing, and if granted, the rehearing shall be held without undue delay."

Section 74. Section 60-135, R.C.M. 1947, is amended to read as follows:

"60-135. **Court review of order of board by suit for injunction — trial de novo — temporary restraining order, when allowed, bond — appeals.** (1) Any interested person adversely affected by any provision of this *chapter*, or by any rule or order *adopted* by the *board* hereunder, or by any act done or threatened thereunder, may obtain court review and seek relief by a suit for an injunction against the *board* as defendant, which suit may be instituted in the district court of the county where the *board* keeps its principal office, or in the district court of any county wherein the land involved or any part thereof is situated. The term "interested person," as used herein, shall be interpreted broadly and liberally, especially where the suit involves the right to drill a well, or involves some other act which clearly affects the plaintiff even though the effect *is* indirect; and if the act complained of involves a general order for a pool, or the right to drill a well therein, a person who owns or has an interest in a well in *the* pool, which well is capable of producing oil or gas, shall be considered to be, *prima facie*, an interested person. *The* suit shall be given a preferential setting, and shall be tried *de novo* and disposed of as an ordinary civil suit, and not upon the record of any hearing before the *board*. The statute, rule, *order*, or decision involved in *the* suit shall be *prima facie* valid; however, the finding of fact, actual or presumed, made by the *board* in support of the rule, order, or decision involved in *the* suit *is* not binding on the court though supported by evi-

dence introduced at a hearing before the *board*. The court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of any *board* action. The court shall:

(a) compel *board* action unlawfully withheld or unreasonably delayed; and (b) hold unlawful and set aside *board* action, findings, and conclusions found to be:

(1) arbitrary, unreasonable, capricious, and abuse of discretion, or otherwise not in accordance with law;

(2) contrary to constitutional right, power, privilege, or immunity;

(3) in excess of statutory jurisdiction, authority or limitations, or short of statutory right;

(4) without observance of procedure required by law; or

(5) unwarranted by the facts.

The court shall consider all the evidence, shall pass on the credibility of witnesses and the weight to be given their testimony, and shall resolve such fact issues as may be necessary for decision in the case.

(2) A temporary restraining order or temporary injunction of any kind *may not* be granted against the *board* and its members or against the attorney general, or against *an* employee of the *board*, restraining the *board* and its members, or employees, or the attorney general, from enforcing this *chapter*, or any rule or order made thereunder, until it *is* shown to the satisfaction of the court that the act done or threatened is probably without sanction of the law or that the provisions of this *chapter*, or the rule or order complained of is probably invalid or unreasonable, and that, if enforced against the complaining party, will probably cause an irreparable injury. With respect to *an* order or decree granting temporary injunctive relief, the nature and extent of the probable invalidity of the statute, or of any provision of this *chapter*, or of a rule or order thereunder involved in *the* suit, must be recited in the order or decree granting the temporary relief, as well as a clear statement of the probable damage relied upon by the court as justifying temporary injunctive relief.

(3) A temporary restraining order or temporary injunction of any kind against the *board* or its members, or its employees, or the attorney general, *may not be* effective until the plaintiff *executes* a bond with sufficient sureties in such amount and upon such conditions as the court *directs*. The bond shall be made payable to the state of Montana, shall be approved by the judge of the court, and shall be for the use and benefit of all persons who may be injured by the acts done under the protection of the temporary restraining order or temporary injunction. A person claiming injury must bring suit within six (6) months after the date of the final determination of the validity, in whole or in part of the provisions of the *chapter* or the rule or order, the enforcement of which was enjoined; otherwise the right to bring such suit *is* forever barred.

(4) An appeal to the supreme court may be taken from any final judgment, decree or order in the action, as provided in *the Rules of Appellate Civil Procedure* of Title 93, *R.C.M. 1947*."

Section 75. Section 60-136, R.C.M. 1947, is amended to read as follows:

"60-136. **Enjoining violations of chapter.** Whenever it appears that a person is violating or threatening to violate this *chapter*, or a rule or order of the *board*, the *board* shall bring suit against *that* person in the district court of any county where the violation occurs or is threatened, to restrain *the* person from continuing *the* violation or from carrying out the threat of violation. In *the* suit, the court *may* grant to the *board*, without bond or other undertaking, such prohibitory and mandatory injunctions as the facts may warrant, including temporary restraining orders."

Section 76. Section 60-140, R.C.M. 1947, is amended to read as follows:

"60-140. **Lands subject to act.** This *chapter applies* to all lands in the state lawfully subject to its taxation and police powers. *It applies* to lands of the United States or to lands subject to the jurisdiction of the United States only to the extent that control and supervision of conservation of oil and gas by the United States on its lands *fails* to effect the intent and purposes of this *chapter* and otherwise *applies* to *those* lands to such extent as any officer of the United States having jurisdiction, or his duly authorized representative, *approves* any of the provisions of this *chapter* or an order of the *board* which affect *those* lands. *This chapter also applies* to any lands committed to a unit agreement approved by the secretary of the interior or his duly authorized representative, except that the *board* may, with respect to *those* unit agreements, suspend the application of this *chapter* or any part of this *chapter* so long as the conservation of oil and gas and the prevention of waste as *provided* in this *chapter* is accomplished under *the* unit agreements; *the suspension does* not relieve *an* operator or owner from making such reports as may be required by the *board* with respect to operations and production under *the* unit agreement, *and the suspension does not* relieve *an* operator or owner from the payment of taxes on his oil and gas production or payment for permit fees as required by this *chapter*."

Section 77. Section 60-141, R.C.M. 1947, is amended to read as follows:

"60-141. **Cooperation with other governmental units and agencies.** The *board may cooperate* with any other state, interstate, or federal agency, and other governmental agencies of the state to effect the objects and purposes of this act and expend such funds as may be reasonably necessary in connection therewith."

Section 78. Section 60-142, R.C.M. 1947, is amended to read as follows:

"60-142. **Penalties.** If a person willfully *violates* any lawful *rule* or order of *the board*, or if a person, for the purpose of evading this *chapter*, or any rule or order of the *board*, knowingly and willfully (1) *makes* or *causes* to be made a false entry or statement in a report required by this *chapter* or by a rule or order of *the board*, or a false entry in a record, account, or memorandum required by this *chapter*, or by a rule or order, or (2) *omits*, or *causes* to be omitted, from *the* record, account, or memo-

random, full, true, and correct entries as required by this *chapter*, or by a rule or order, or (3) *removes* from this state or *destroys, mutilates, alters, or falsifies* the record, account, or memorandum, *that* person is guilty of a misdemeanor and shall be subject to a fine of not more than five thousand dollars (\$5,000) or imprisonment in a county jail for a term not exceeding six (6) months, or to both *the* fine and imprisonment."

Section 79. Section 60-143, R.C.M. 1947, is amended to read as follows:

**"60-143. Chapter does not constitute oil or gas wells as public utilities.** Nothing in this *chapter* shall in any manner be construed as constituting or attempting to constitute oil or gas wells as a public utility or utilities."

Section 80. Section 60-144, R.C.M. 1947, is amended to read as follows:

**"60-144. Owners shall make available to board cores and cuttings.** An owner drilling a well for gas or oil shall make available to the *board* at its field offices representative cores or chips, when available, and the cuttings from *the* well. *However*, cores, chips or cuttings need not be so made available for a period of six (6) months following completion or abandonment of *the* wells. *The board* may, however, relieve the owner of a well of the obligation to furnish *cores, chips, or cuttings* when in the opinion of the *board*, the furnishing thereof would be unduly burdensome for *the* owner; however, *the* owner desiring relief must apply to and receive permission from the *board* to not so furnish. The owner of a stratigraphic test well drilled for the purpose of obtaining lithologic information useful in potential oil and gas operations, as such well is defined by the *board's* rules shall within six (6) months from the date of the cessation of the drilling of *the* well, make available to the *board*, complete sets of sample cuttings and representative cores or chips and well logs of *the* wells, which logs shall include among other information the size of casing used and the type and depth of water if any located; *the* cuttings, cores, chips and logs shall be impounded and kept secure and confidential by the *board* until such time that the *board* *desires* to use the same; *however*, the *board* may not use *the* logs, chips, cores and cuttings from stratigraphic test wells until a period of three (3) years from the date of their impounding by the *board* has elapsed unless the owner of *the* stratigraphic test well consents to their use by the *board* prior to the expiration of the three (3) year period. The *board*, during the period of impoundment for any cores, cuttings, chips, or logs from any stratigraphic test well, *may* not give any person access to *the* cores, chips, cuttings or logs, and it *may* not disclose any information relating thereto or derived therefrom. The *board* shall require, and the owner of a stratigraphic test well shall furnish, prior to the commencement of drilling of *the* well, a good and sufficient surety bond, to be approved prior to the commencement of *the* drilling, conditioned upon the proper plugging of *the* well prior to abandonment, the amount of the bond to be determined by the estimated depth as in the *board's* rules provided for oil and gas wells, and, prior to abandonment, *the* wells shall be plugged by the owner thereof, or by the surety should the owner be in default, *the* plugging to conform to the standards set down and determined by the *board*."

Section 81. Section 60-145, R.C.M. 1947, is amended to read as follows:

**"60-145. Privilege and license tax — quarterly statements — penalties — drilling permit fees — oil and gas conservation moneys.**

(1) For the purpose of providing funds for defraying the expenses of the operation and enforcement of this *chapter*, and expenses of *the board*, the operators and producers of oil and gas shall pay an assessment not to exceed the amounts set forth in the following schedule on each barrel of crude petroleum originally produced, saved and marketed or stored within the state, or exported from the state, and on each ten thousand (10,000) cubic feet of natural gas produced, saved and marketed or stored within the state, or exported therefrom:

(a) On leases on which wells are producing an average of twenty-five (25) barrels of crude petroleum per day, or less, an assessment not to exceed three-eighths of one cent ( $\frac{3}{8}\text{¢}$ ) per barrel;

(b) On leases on which wells are producing an average of more than twenty-five (25) barrels of crude petroleum per day, an assessment not to exceed three-fourths of one cent ( $\frac{3}{4}\text{¢}$ ) per barrel; *and*,

(c) On wells producing, saving and marketing, storing, or exporting, natural gas, *the operators and producers* shall pay an assessment not to exceed two and one-half ( $2\frac{1}{2}$ ) mills per ten thousand (10,000) cubic feet of natural gas where said gas is marketed for less than fifteen cents (15¢) per thousand (1,000) cubic feet and an assessment not to exceed five (5) mills per ten thousand (10,000) cubic feet of natural gas where said gas is marketed for fifteen cents (15¢) or more per thousand (1,000) cubic feet.

(2) The *board* shall by order, without prior notice, or hearing, fix the amount of *the assessments* and may, from time to time, without prior notice or hearing, reduce or increase the amount thereof as, in its judgment, the expenses chargeable against the oil and gas conservation fund may require; however, the assessments fixed by the *board may not* exceed the limits prescribed in *this section*. The amounts of *the assessments* shall be a percentage factor (not to exceed one hundred per cent) of the rates set forth in *subsections (a), (b), and (c)* above, and the same percentage factor shall be applied by the *board* in fixing the amount of the assessment on each barrel of crude production and each ten thousand (10,000) cubic feet of natural gas mentioned in *those subsections*. The producers of *the crude petroleum and natural gas* shall pay *the assessments* on each barrel of crude petroleum and each ten thousand (10,000) cubic feet of natural gas produced for themselves, as well as for others, including royalty holders, and *the producers* shall be reimbursed for *the payments* made on crude oil and natural gas produced for others in the same manner as they are reimbursed for net proceeds tax paid on crude petroleum or natural gas produced for others *under* section 84-6208.

(3) For the purposes of this section, a "lease" means that particularly described tract of land contained in a contract in writing whereby a person having a legal estate in the land so described conveys a portion of his interest to another, in consideration of a certain rental or other recompense or consideration. Further, for the purposes of this section, leases owned or operated by one (1) lessee which in whole or in part cover



or affect an underground reservoir containing a common accumulation of crude petroleum oil or natural gas, or both, or which are encompassed within or affected by one (1) particular unit agreement shall be considered as one (1) lease relative to payments to be made under this section.

(4) In addition to the above-mentioned privilege and license tax, a person, before commencing the drilling of an oil or gas well or stratigraphic test well or core hole, shall secure from the *board* a drilling permit and shall pay to the *board* therefor the following amounts: for each well whose estimated depth is thirty-five hundred (3500) feet or less, twenty-five dollars (\$25.00); from thirty-five hundred and one (3501) feet to seven thousand (7,000) feet, seventy-five dollars (\$75.00); seven thousand (7,000) feet and deeper, one hundred fifty dollars (\$150.00).

(5) Each producer of crude petroleum in the state shall, not later than the last day of each of the calendar months of January, April, July and October, of each calendar year, render a true statement to the state treasurer of the state, and a duplicate thereof to the *board*, duly signed and sworn to, of all crude petroleum produced by him in this state during the preceding three (3) calendar months, and containing such other information as the *board* may require, and shall accompany the statement with the payment to the state treasurer of the assessment provided for in subsection (1) of this section, for the period covered by the statement. Each producer of natural gas in the state shall render like statements to the state treasurer of all natural gas produced by him in this state, and shall make payment of the assessment provided for in subsection (1) of this section, at such times and for such periods as may be prescribed by rule of the *board*. Any producer carrying on business at more than one (1) place or location in this state may include all those places of business in one (1) statement.

(6) An assessment not paid within the time specified is delinquent, and a penalty of twenty-five per cent (25%) thereof shall be added thereto and the whole thereof shall bear interest at the rate of one per cent (1%) per month from the date of delinquency until paid. Upon request of the *board* the attorney general shall commence and prosecute to final determination in any court of competent jurisdiction an action at law to collect the same.

(7) All money collected under this chapter shall be deposited in the earmarked revenue fund by the state treasurer of the state, and shall be used for the purpose of paying all expenses of the *board* and for no other purpose; all these moneys shall be used by the *board* subject to the approval of the department of administration and biennial appropriations by the legislative assembly."

Section 82. Section 60-148, R.C.M. 1947, is amended to read as follows:

"60-148. **Availability of facilities to bureau.** The *board* may make available to the authorized personnel or representatives of the bureau of mines and geology such facilities, equipment, records, and cores and cuttings, or samples of cores and cuttings, as are, or may be, required by the bureau in the furtherance of its oil and gas research and study."

Section 83. Section 60-801, R.C.M. 1947, is amended to read as follows:

"60-801. **Definitions.** *Unless the context requires otherwise, in this chapter:*

(1) "*Underground reservoir*" means any subsurface sand, stratum or formation of the earth suitable for the injection and storage of natural gas therein and the withdrawal of natural gas therefrom;

(2) "*Natural gas*" means gas either while in its original state or after the same has been processed by removal therefrom of component parts not essential to its use for light and fuel;

(3) "*Native gas*" means gas which has not been previously withdrawn from the earth;

(4) "*Natural gas public utility*" means any person, firm or corporation authorized to do business in this state and engaged in the business of transporting or distributing natural gas by means of pipelines into, within or through this state for ultimate public use;

(5) "*Board*" means the board of oil and gas conservation provided for in section 82A-1508;

(6) "*Underground storage*" means the process of injecting and storing of natural gas within and withdrawing of natural gas from an underground reservoir."

Section 84. Section 60-802, R.C.M. 1947, is amended to read as follows:

"60-802. **Underground storage.** (1) The underground storage of natural gas which promotes conservation thereof, which permits the building of reserves for orderly withdrawal in periods of peak demand, which makes more readily available natural gas to the domestic, commercial and industrial consumers of this state, or which provides a better year-round market to the various gas fields, serves the public interest and welfare of this state.

(2) Therefore, in the manner hereinafter provided the board and the court may find and determine that the underground storage of natural gas as hereinbefore defined is in the public interest."

Section 85. Section 60-803, R.C.M. 1947, is amended to read as follows:

"60-803. **Eminent domain — use and limitations.** (1) A natural gas public utility may acquire through the exercise of the right of eminent domain as provided in this chapter for its use for the underground storage of natural gas an underground reservoir which the board finds is suitable and in the public interest for the underground storage of natural gas, and in connection with the underground reservoir the utility may acquire such other interests in property as may be required adequately to maintain and operate the underground reservoir facilities. The acquisition by the exercise of the right of eminent domain of underground reservoirs granted by this section is limited as follows:

(a) No sand, formation, or stratum which is producing or has produced, or which is capable of producing oil, is subject to appropriation under this section.

(b) No gas-bearing sand, formation, or stratum *is* subject to appropriation *under this section*, unless the recoverable volumes of native gas therein have all been produced or unless *the* sand, formation or stratum has a greater value or utility as an underground reservoir for the purpose of insuring an adequate supply of natural gas for domestic, commercial, or industrial consumers of natural gas, or for the conservation of natural gas, than for the production of the remaining relatively small volumes of native gas as compared with the original volumes of natural gas therein. Gas, sand, formation or stratum *may not* be acquired under this *chapter* when the gas in the underground reservoir is being used for the secondary recovery of oil, unless gas in necessary and required amounts is furnished to the operator of the secondary recovery operations for as long as oil is produced in paying quantities in the secondary operations for the recovery of oil at the same cost as the cost to *the operator* at the time of acquisition of the gas being used in *the* secondary operations, not exceeding, however, the quantity of the appropriated gas that remained recoverable from *the* sand, formation or stratum at the time of its acquisition, if *the operator* was at *that* time entitled to the whole thereof, or if *the operator* was at *that* time entitled to less than the whole thereof, then not to exceed the quantity thereof to which *the operator* was then entitled.

(c) Only *the* area of *the* underground sand, formation or stratum as may reasonably be expected to be penetrated by gas displaced or injected into *the* underground gas storage reservoir may be appropriated.

(d) No rights or interests in existing underground gas reservoirs, being used for the injection, storage or withdrawal of natural gas, owned or operated by a natural gas public utility other than the natural gas public utility seeking to acquire the same, *are* subject to appropriation.

(2) The exercise of the right of eminent domain granted by *this section* shall be without prejudice to the rights of the owner of *the* lands or of other rights or interests therein to drill or bore into or through the underground reservoir so appropriated in a manner *that complies* with orders and rules of the *board* issued for the purpose of protecting *the* underground reservoir against pollution and against the escape of natural gas therefrom, and shall be without prejudice to the rights of the owner of *the* lands or other rights or interests therein as to all other uses thereof. The additional cost of complying with *those rules* or orders in order to protect the storage reservoir shall be paid by the natural gas public utility."

Section 86. Section 60-804, R.C.M. 1947, is amended to read as follows:

"60-804. **Certificate of board — publication.** A natural gas public utility desiring to exercise the right of eminent domain as to any property for use for underground storage of natural gas shall, as a condition precedent to the filing of its complaint in the district court, apply for and obtain from the *board* a certificate setting out *the* findings of *the board*:

(a) that the underground sand, stratum or formation sought to be acquired is suitable for an underground reservoir for the storage of natural gas and that its use for such purposes is in the public interest;

(b) the amount of native gas, if any, remaining therein and the portion thereof recoverable;

(c) and that the applicant has in good faith sought to acquire the rights sought *under this chapter*. *The board may not issue the certificate until after a public hearing is had on the application, pursuant to notice given to all persons known to have an interest in the property proposed to be acquired in the manner provided by the laws of the state for service of process in a civil action.*"

Section 87. Section 60-805, R.C.M. 1947, is amended to read as follows:

"60-805. **Proceedings.** A natural gas public utility having first obtained a certificate from the *board* desiring to exercise the right of eminent domain for the purpose of acquiring property for the underground storage of natural gas shall do so in the manner provided *in this section*. *The natural gas public utility shall present to the district court of the county wherein the land is situated a complaint setting forth the purpose for which the property is sought to be acquired, a description of the property sought to be appropriated and the names of the owners thereof as shown by the records of the county. The plaintiff shall file the certificate of the board as a part of its complaint and no order by the court granting the complaint shall be entered without the certificate being filed therewith. Subsequent proceedings shall follow the procedure provided by law in the exercise of the rights of eminent domain, sections 93-9901 et seq.*"

Section 88. Section 76-103, R.C.M. 1947, is amended to read as follows:

"76-103. **Definitions.** *Unless the context requires otherwise, in this act:*

(1) "District" or "conservation district" means a governmental subdivision of this state, and a public body corporate and politic, organized in accordance with this act, for the purposes, with the powers, and subject to the restrictions hereinafter set forth;

(2) "Supervisor" means one of the members of the governing body of a district, elected or appointed in accordance with this act;

(3) "Department" means the *department of natural resources and conservation provided for in Title 82A, chapter 15*;

(4) "Board" means the *board of natural resources and conservation provided for in section 82A-1509*;

(5) "Petition" means a petition filed under subsection (1) of section 76-105 for the creation of a district;

(6) "Nominating petition" means a petition filed under section 76-106 to nominate candidates for the office of supervisor of a soil conservation district;

(7) "Agency of this state" includes the government of this state and any subdivision, agency, or instrumentality, corporate or otherwise, of the government of this state;

(8) "United States" or "agencies of the United States" includes the United States of America, the soil conservation service of the United States department of agriculture, and any other agency or instrumentality, corporate or otherwise, of the United States of America;

(9) "Government" or "governmental" includes the government of this state, the government of the United States, and any subdivision, agency, or instrumentality, corporate or otherwise of either of them;

(10) "Land occupier" or "occupier of land" includes a person, firm, corporation, municipality or other entity who *holds* title to, or *is* in possession of, lands lying within a district organized under this act, whether as owner, lessee, renter, tenant, or otherwise;

(11) "Due notice" means notice published at least twice, with an interval of at least fourteen (14) days between the two (2) publication dates, in a newspaper or other publication of general circulation within the proposed area, or by posting at a reasonable number of conspicuous places within the appropriate area, *the* posting to include, where possible, posting at public places where it may be customary to post notices concerning county or municipal affairs generally. At any hearing held pursuant to *the* notice, at the time and place designated in *the* notice, adjournment may be made from time to time without the necessity of renewing *the* notice for *the* adjourned dates.

(12) "Qualified elector" means a qualified elector as defined in Title 23, R.C.M. 1947."

Section 89. Section 76-104, R.C.M. 1947, is amended to read as follows:

"76-104. **Duties of department.** In addition to the duties hereinafter conferred upon the *department*, it shall:

(1) *Offer* assistance as may be appropriate to the supervisors of conservation districts in the carrying out of their powers and programs;

(2) *Keep* the supervisors of each of the several districts informed of the activities and experiences of all other districts, and facilitate an interchange of advice and experiences between *the* districts and *cooperation* between them;

(3) *Coordinate* the programs of the several conservation districts hereunder so far as this may be done by advice and consultation;

(4) *Secure* the *cooperation* and assistance of the United States and of agencies of this state, in the work of *the* districts;

(5) *Disseminate* information throughout the state concerning the activities and programs of the conservation districts, and encourage the formation of districts in areas where their organization is desirable."

Section 90. Section 76-105, R.C.M. 1947, is amended to read as follows:

"76-105. **Creation of conservation districts.** (1) Any ten (10) qualified electors within the limits of the territory proposed to be organized

into a district may file a petition with the *department* asking that *the board approve the organization of a conservation district to function in the territory described in the petition. The petition shall set forth:*

- (a) The proposed name of *the* district;
- (b) That there is need, in the interest of the public health, safety, and welfare, for a conservation district to function in the territory described in the petition;
- (c) A description of the territory proposed to be organized as a district, which description *may* not be required to be given by metes and bounds or by legal subdivisions, but shall be *considered* sufficient if generally accurate;
- (d) A request that the *board* duly define the boundaries for *the* district; that a referendum be held within the territory so defined on the question of the creation of a conservation district in *the* territory; and that the *board* determine that a district be created.

(2) Where more than one (1) petition is filed covering parts of the same territory, the *board* may consolidate all or any part of *the* petitions.

(3) Within thirty (30) days after a petition has been filed with the *department*, it shall cause due notice to be given of a proposed hearing *before the department* upon the question of the desirability and necessity, in the interest of the public health, safety, and welfare, of the creation of *the* district, upon the question of the appropriate boundaries to be assigned to *the* district, upon the propriety of the petition and other proceedings taken under this act, and upon all questions relevant to *those* inquiries. All qualified electors within the limits of the territory described in the petition, and of lands within any territory considered for addition to *the* described territory, and all other interested parties, *are entitled to attend the hearings and be heard. If it appears to the board after reviewing the record of the hearing that it may be desirable to include within the proposed district territory outside of the area within which due notice of the hearing has been given, the board shall adjourn the hearing and the department shall cause due notice of a further hearing to be given throughout the entire area considered for inclusion in the district, and the further hearing shall be held by the department. After the hearing, if the board determines, upon the facts presented at the hearing and upon other relevant facts and information as may be available to the department or the board, that there is need, in the interest of the public health, safety and welfare, for a conservation district to function in the territory considered at the hearing, it shall make and record that determination, and shall define, by metes and bounds or by legal subdivisions, the boundaries of the district. In making the determinations and in defining the boundaries, the board shall consider the topography of the area considered and of the state, the composition of soils therein, the distribution of erosion, the prevailing land-use practices, the desirability and necessity of including within the boundaries the particular lands under consideration and the benefits those lands may receive from being included within the boundaries, the relation of the proposed area to existing watersheds and agricultural regions, and other conservation districts already organized or*

proposed for organization under this act, and such other physical, geographical, and economic factors as are relevant, having due regard to the legislative determination set forth in section 76-102. The territory to be included within *the* boundaries need not be contiguous. If the *board determines* after *the* hearing, after due consideration of the relevant facts, that there is no need for a conservation district to function in the territory considered at the hearing, it shall make and record *that* determination and shall deny the petition. After six (6) months have expired from the date of the denial of *a* petition, subsequent petitions covering the same or substantially the same territory may be filed and *a* new hearing held and determinations made thereon.

(4) After the *board* has made and recorded a determination that there is need, in the interest of the public health, safety, and welfare, for the organization of a district in a particular territory and has defined the boundaries thereof, it shall consider the question whether the operation of a district within *the* boundaries with the powers conferred upon conservation districts in this act is administratively practicable and feasible. To assist the *board* in the determination of *this* administrative practicability and feasibility, *the department shall*, within a reasonable time after entry of the *board's* finding that there is need for the organization of the proposed district and the determination of the boundaries thereof, hold a referendum within the proposed district upon the proposition of the creation of the district, and cause due notice of *the* referendum to be given. The question shall be submitted by ballots upon which the words "For creation of a conservation district of the lands below described and lying in the county(ies) of ...., ...., and ...." and "Against creation of a conservation district of the lands below described and lying in the county(ies) of .... and ...." shall appear, with a square before each proposition and a direction to insert an "X" mark in the square before one or the other of *the* propositions as the voter may favor or oppose creation of *the* district. The ballot shall set forth the boundaries of *the* proposed district as determined by the *board*. All qualified electors within the boundaries of the territory, as determined by the *department*, are eligible to vote in *the* referendum.

(5) The *department* shall pay all expenses for the issuance of *the* notices and the conduct of *the* hearings and referenda, and shall supervise the conduct of *the* hearings and referenda. It shall *adopt* appropriate *rules* governing the conduct of *the* hearings and referenda, and providing for the registration prior to the date of the referendum of all eligible voters, or prescribing some other appropriate procedure for the determination of those eligible as voters in *the* referendum. No informalities in the conduct of *the* referendum or in any matters relating thereto shall invalidate *the* referendum or the result thereof if notice thereof *has* been given substantially as herein provided and *the* referendum *has* been fairly conducted.

(6) The *department* shall publish the result of *the* referendum and *the board* shall thereafter consider and determine whether the operation of the district within the defined boundaries is administratively practicable and feasible. If the *board determines* that the operation of *the* district is not administratively practicable and feasible, it shall record *that* determination and deny the petition. If the *board determines* that the operation

of *the* district is administratively practicable and feasible, it shall record *that* determination and shall proceed with the organization of the district in the manner hereinafter provided. In making *its* determination the *board* shall *consider* the attitudes of the qualified electors within the defined boundaries, the number of qualified electors eligible to vote in *the* referendum who voted, the proportion of the votes cast in *the* referendum in favor of the creation of the district to the total number of votes cast, the approximate wealth and income of the qualified electors of the proposed district, the probable expense of carrying on erosion-control operations within *the* district, and such other economic and social factors relevant to *the* determination, having due regard to the legislative determinations set forth in section 76-102; however, the *board may not* determine that the operation of the proposed district within the defined boundaries is administratively practicable and feasible unless a majority of the votes cast in the referendum upon the proposition of creation of the district have been cast in favor of the creation of *the* district.

(7) If the *board determines* that the operation of the proposed district within the defined boundaries is administratively practicable and feasible, it shall appoint two (2) supervisors to act with the three (3) supervisors elected as provided hereinafter, as the governing body of the district. *The* district is a governmental subdivision of this state and a public body corporate and politic, upon the taking of the following proceedings:

(8) The two (2) appointed supervisors shall present to the secretary of state an application signed by them, which shall set forth: (a) That a petition for the creation of the district was filed with the *department* pursuant to this act, that the proceedings specified in this act were taken pursuant to *the* petition, that the application is being filed in order to complete the organization of the district as a governmental subdivision and a public body, corporate and politic, under this act, and that the *board* has appointed them as supervisors; (b) the name and official residence of each of the supervisors, together with a certified copy of the appointments evidencing their right to office; (c) the term of office of each of the supervisors; (d) the name which is proposed for the district; and (e) the location of the principal offices of the supervisors of the district. The application shall be subscribed and sworn to by each of the supervisors. The application shall be accompanied by a statement by the *department*, which shall certify that a petition was filed, notice issued, and hearing held as *provided in this act*; that the *board determined* that there is need, in the interest of the public health, safety, and welfare, for a conservation district to function in the proposed territory, and *defined* the boundaries thereof; that notice was given and a referendum held on the question of the creation of *the* district, and that the result of *the* referendum showed a majority of the votes cast in *the* referendum to be in favor of the creation of the district; *and* that thereafter the *board determined* that the operation of the proposed district is administratively practicable and feasible. *The* statement shall *also* set forth the boundaries of the district as they have been defined by the *board*.

(9) The secretary of state shall examine the application and statement and, if he finds that the name proposed for the district is not identical with that of any other conservation district of this state or so nearly simi-



lar as to lead to confusion or uncertainty, he shall receive and file them and shall record them in an appropriate book of record in his office. If the secretary of state *finds* that the name proposed for the district is identical with that of any other conservation district of this state, or so nearly similar as to lead to confusion and uncertainty, he shall certify *that fact* to the *board*, which shall thereupon submit to the secretary of state a new name for the district, which *is* not subject to such defects. Upon receipt of *the* new name, free of such defects, the secretary of state shall record the application and statement, with the name so modified, in an appropriate book of record in his office. When the application and statement have been made, filed, and recorded, as herein provided, the district *is* a governmental subdivision of this state and a public body corporate and politic. The secretary of state shall make and issue to the supervisors without cost a certificate, under the seal of the state, of the due organization of the district, and shall record *the* certificate with the application and statement. The boundaries of *the* district shall include the territory as determined by the *board*, but they *may not* include any area included within the boundaries of another conservation district.

(10) After six (6) months have expired from the date of entry of a determination by the *board* that operation of a proposed district is not administratively practicable and feasible, and denial of a petition pursuant to *the* determination, subsequent petitions may be filed and action taken thereon in accordance with this act.

(11) Petitions for including additional territory within an existing district may be filed with the *department*, and the proceedings herein provided for in the case of petitions to organize a district shall be *followed* in the case of petitions for *the* inclusion. The *department* shall prescribe the form for *the* petitions, which shall be as nearly as may be in the form prescribed in this act for petitions to organize a district. Where the total number of qualified electors in the area proposed for inclusion *are* less than ten (10), the petition may be filed when signed by a majority of the qualified electors of *the* area, and in *that* case no referendum need be held. In referenda upon petitions for *the* inclusion, all qualified electors within the proposed additional area *are* eligible to vote.

(12) In a suit, action, or proceeding involving the validity or enforcement of, or relating to, a contract, proceeding, or action of the district, the district shall be *considered* to have been established in accordance with this act upon proof of the issuance of the certificate by the secretary of state. A copy of *the* certificate, duly certified by the secretary of state, is admissible in evidence in *the* suit, action, or proceeding and *is* proof of the filing and contents thereof."

Section 91. Section 76-106, R.C.M. 1947, is amended to read as follows:

"76-106. **Election of supervisors for each district.** Within thirty (30) days after the date of issuance by the secretary of state of a certificate of organization of a conservation district, nominating petitions may be filed with the *department* to nominate candidates for supervisors of *the* district. The *department* may extend the time within which nominating petitions may be filed. A nominating petition *may not* be accepted by the *department* unless it *is* subscribed by ten (10) or more qualified electors

within the boundaries of *the* district. Qualified electors may sign more than one (1) nominating petition to nominate more than one (1) candidate for supervisor. The *department* shall give due notice of an election to be held for the election of three (3) supervisors for the district. The names of all nominees on behalf of whom *the* nominating petitions have been filed within the time herein designated, shall be printed, arranged in the alphabetical order of the surnames, upon ballots, with a square before each name and a direction to insert an "X" mark in the square before any three (3) names to indicate the voter's preference. All qualified electors within the district *are* eligible to vote in *the* election. The three (3) candidates who receive the largest number, respectively, of the votes cast in *the* election *are* the elected supervisors for *the* district. The *department* shall pay all the expenses of *the* election, shall supervise the conduct thereof, shall prescribe *rules* governing the conduct of *the* election and the determination of the eligibility of votes therein, and shall publish the results thereof."

Section 92. Section 76-107, R.C.M. 1947, is amended to read as follows:

"76-107. **Appointment, qualifications and tenure of supervisors.** (1) The governing body of the district shall, if there are no incorporated municipalities within the boundaries of said district, consist of five (5) or seven (7) supervisors, elected or appointed as provided herein.

(2) In all cases where the boundaries of such conservation district include any incorporated municipality or municipalities, said board of supervisors, in addition to said five (5) elected supervisors, shall consist of two (2) appointed supervisors, making a total of seven (7) supervisors in such districts. The two (2) appointed supervisors must be residents of the municipalities within the district. The legislative bodies of the incorporated municipalities within the district shall, after consultation with the elected supervisors, appoint the two (2) additional supervisors. The term of office of the appointed supervisors shall be three (3) years.

(3) Where there are more than two (2) incorporated municipalities within a district, then the two (2) appointed supervisors shall represent all the municipalities and urban interests in the district, and no municipality shall have more than one (1) appointed supervisor residing therein.

(4) The supervisors shall annually elect a chairman from their members. The term of office of each supervisor shall be three (3) years, except that the supervisors who are first appointed shall be designated to serve for terms of one (1) and two (2) years, respectively, from the date of their appointment. An elected supervisor shall hold office until his successor has been elected and has qualified. Any vacancy occurring in the office of an elected supervisor shall be filled by appointment by the remaining supervisors until the next regular election, when a successor shall be elected to serve the unexpired term. A majority of the supervisors constitute a quorum and the concurrence of a majority in any matter within their duties *is* required for its determination. A supervisor *may not* receive compensation for his services, but he *is* entitled to expenses, including traveling expenses, necessarily incurred in the discharge of his duties.

(5) The supervisors may employ a secretary and such other officers, agents, and employees, permanent and temporary, as they may require, and shall determine their qualifications, duties and compensation. The supervisors may call upon the attorney general of the state for such legal services as they may require, or may employ their own counsel and legal staff. The supervisors may delegate to their chairman, to one (1) or more supervisors, or to one (1) or more agents or employees, such powers and duties as they *consider* proper. The supervisors shall furnish to the *department* copies of such ordinances, rules, regulations, orders, contracts, forms, and other documents as they adopt or employ, and such other information concerning their activities as may be required in the performance of *their* duties under this act.

(6) The supervisors shall provide for the execution of surety bonds for all employees and officers who *are* entrusted with funds or property; shall provide for the keeping of a full and accurate record of all proceedings, and of all resolutions, regulations, and orders issued or adopted; and shall provide for an annual audit of the accounts of receipts and disbursements. A supervisor may be removed by the *board* upon notice and hearing, for neglect of duty or malfeasance in office, but for no other reason.

(7) The supervisors may invite the legislative body of any municipality or county located near the territory comprised within the district to designate a representative to advise and consult with the supervisors of the district on all questions of program and policy which may affect the property, water supply, or other interests of *the* municipality or county."

Section 93. Section 76-111, R.C.M. 1947, is amended to read as follows:

"76-111. **Board of adjustment.** (1) Where the supervisors of a district adopt an ordinance prescribing land-use regulations in accordance with section 76-109, they shall further provide by ordinance for the establishment of a board of adjustment. *The* board of adjustment shall consist of three (3) members, each to be appointed for a term of three (3) years, except that the members first appointed shall be appointed for terms of 1, 2, and 3 years, respectively. The members of each board of adjustment shall be appointed by the *department*, with the advice and approval of the supervisors of the district for which *the* board has been established, and *may be removed by the department*, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other reason, *the* hearing to be conducted jointly by the *department* and the supervisors of the district. Vacancies in the board of adjustment shall be filled in the same manner as original appointments and shall be for the unexpired term of the member whose term becomes vacant. Members of the *board of natural resources and conservation, employees of the department*, and the supervisors of the district *are* ineligible to appointment as members of the board of adjustment. The members of the board of adjustment shall receive compensation for their services at the rate of four dollars (\$4) per diem for time spent on the work of the board, in addition to expenses, including traveling expenses, necessarily incurred in the discharge of their duties. The supervisors shall pay the necessary administrative and other expenses of operation incurred by the board, upon the certificate of the chairman of the board.

(2) The board of adjustment shall adopt rules to govern its procedures, which rules shall be in accordance with this act, and with any ordinance adopted pursuant to this section. The board shall annually elect a chairman from among its members. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. Any two (2) members of the board constitute a quorum. The chairman, or in his absence, such other member of the board as he may designate to serve as acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep a full and accurate record of all proceedings, of all documents filed with it, and of all orders entered, which shall be filed in the office of the board and shall be a public record.

(3) Any qualified elector may file a petition with the board of adjustment, alleging that there are great practical difficulties or unnecessary hardship in the way of his carrying out upon his lands the strict letter of the land-use regulations prescribed by ordinance approved by the supervisors, and praying the board to authorize a variance from the terms of the land-use regulations in the application of *the* regulations to the lands occupied by the petitioner. Copies of *the* petition shall be served by the petitioner upon the chairman of the supervisors of the district within which his lands are located and upon the *department*. The board of adjustment shall fix a time for the hearing of the petition and cause due notice of *the* hearing to be given. The supervisors of the district and the *department are entitled* to appear and be heard at *the* hearing. A qualified elector within the district who *objects* to the authorizing of the variance prayed for may intervene and become a party to the proceedings. A party to the hearing before the board may appear in person, by agent, or by attorney. If, upon the facts presented at *the* hearing the board *determines* that there are great practical difficulties or unnecessary hardship in the way of applying the strict letter of any of the land-use regulations upon the lands of the petitioner, it shall make and record *that* determination and shall make and record findings of fact as to the specific conditions which establish *the* great practical difficulties or unnecessary hardship. Upon the basis of *the* findings and determination, the board *may* order a variance from the terms of the land-use regulations, in their application to the lands of the petitioner, *that* will relieve *the* great practical difficulties or unnecessary hardship and will not be contrary to the public interest, and such that the spirit of the land-use regulations *are* observed, the public health, safety, and welfare secured, and substantial justice done.

(4) A petitioner aggrieved by an order of the board granting or denying, in whole or in part, the relief sought, the supervisors of the district, or *an* intervening party, may obtain a review of *the* order in any district court of the county, in which the lands of the petitioner lie, by filing in *the* court a petition praying that the order of the board be modified or set aside. A copy of *the* petition shall *immediately* be served upon the parties to the hearing before the board, and thereupon the party seeking review shall file in the court a transcript of the entire record in the proceedings, certified by the board, including the documents and testimony upon which the order complained of was entered, and the findings, determination, and order of the board. Upon *the* filing, the court shall

cause notice thereof to be served upon the parties, and *the court has* jurisdiction of the proceedings and of the questions determined or to be determined therein, and *may* grant such temporary relief as it deems just and proper, and make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside, in whole or in part, the order of the board. A contention that *is* not urged before the board *may not* be considered by the court unless the failure or neglect to urge *the* contention *is* excused because of extraordinary circumstances. The findings of the board as to the facts, if supported by evidence, *are* conclusive. If *a* party *applies* to the court for leave to produce additional evidence and *shows* to the satisfaction of the court that *the* evidence is material and that there *are* reasonable grounds for the failure to produce *the* evidence in the hearing before the board, the court may order *the* additional evidence to be taken before the board and to be made a part of the transcript. The board may modify its findings as to the facts or make new findings, taking into consideration the additional evidence so taken and filed, and it shall file *the* modified or new findings, which, if supported by evidence, *are* conclusive, and shall file with the court its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court *is* exclusive and its judgment and decree *are* final, except that *they are* subject to review in the same manner as are other judgments or decrees of the court."

Section 94. Section 76-114, R.C.M. 1947, is amended to read as follows:

"76-114. **Discontinuance of districts.** (1) At any time after five (5) years after the organization of a district under this act, any ten (10) qualified electors within the boundaries of *the* district may file a petition with the *department*, praying that the *board terminate the* operations of the district and *discontinue* the existence of the district. The *department* may conduct such public meetings and public hearings upon *the* petition as *are* necessary to assist it *and the board* in the consideration thereof.

(2) Within sixty (60) days after *the* petition has been received by the *department* it shall give due notice of the holding of a referendum, and shall supervise *the* referendum, and issue appropriate regulations governing the conduct thereof, the question to be submitted by ballots upon which the words "For terminating the existence of the .... (name of the conservation district to be here inserted)" and "Against terminating the existence of the .... (name of the conservation district to be here inserted)" shall appear, with the square before each proposition and a direction to insert an "X" mark in the square before one or the other of *the* propositions as the voter may favor or oppose discontinuance of *the* district. All qualified electors within the boundaries of the district *are* eligible to vote in *the* referendum. No informalities in the conduct of *the* referendum or in any matters relative thereto shall invalidate *the* referendum or the result thereof if notice thereof *is* given substantially as herein provided and *the* referendum *is* fairly conducted.

(3) The *department* shall publish the result of *the* referendum and *the board* shall thereafter consider and determine whether the continued operation of the district within the defined boundaries is administratively practicable and feasible. If the *board determines* that the continued oper-

ation of *the* district is administratively practicable and feasible, it shall record *that* determination and deny the petition. If the *board determines* that the continued operation of *the* district is not administratively practicable and feasible, it shall record *that* determination and shall certify *the* determination to the supervisors of the district.

(4) In making *the* determination the *board* shall give due regard and weight to the attitudes of the qualified electors lying within the district, the number of land occupiers qualified electors eligible to vote in *the* referendum who voted, the proportion of the votes cast in *the* referendum in favor of the discontinuance of the district to the total number of votes cast, the approximate wealth and income of the qualified electors of the district, the probable expense of carrying on erosion control operations within *the* district, and such other economic and social factors as may be relevant to *the* determination, having due regard to the legislative findings set forth in section 76-102; however, the *board may* not determine that the continued operation of the district is administratively practicable and feasible unless at least a majority of the votes cast in the referendum *are* cast in favor of the continuance of *the* district.

(5) Upon receipt from the *department* of a certification of *the board* that the *board* has determined that the continued operation of the district is not administratively practicable and feasible, pursuant to this section, the supervisors shall *immediately* proceed to terminate the affairs of the district. The supervisors shall dispose of all property belonging to the district at public auction and shall pay over the proceeds of *the* sale to be covered into the state treasury. The supervisors shall thereupon file an application, duly verified, with the secretary of state for the discontinuance of *the* district, and shall transmit with *the* application the certificate of the *board*, setting forth the determination of the *board* that the continued operation of *the* district is not administratively practicable and feasible. The application shall recite that the property of the district has been disposed of and the proceeds paid over as in this section provided, and shall set forth a full accounting of *the* properties and proceeds of the sale. The secretary of state shall issue to the supervisors a certificate of dissolution and shall record *the* certificate in an appropriate book of record in his office.

(6) Upon issuance of a certificate of dissolution under this section, all ordinances and regulations theretofore adopted and in force within *the district are void*. All contracts *previously* entered into, to which the district or supervisors are parties, remain in effect for the period provided in *those* contracts. The *department* shall be substituted for the district or supervisors as party to *the* contracts. The *department* is entitled to all benefits and subject to all liabilities under *the* contracts and *has* the same right and liability to perform, to require performance, to sue and be sued thereon, and to modify or terminate *the* contracts by mutual consent or otherwise, as the supervisors of the district would have had. *The* dissolution *does* not affect the lien of any judgment entered under section 76-110, nor the pendency of *an* action instituted under *that* section, and the *department succeeds* to all rights and obligations of the district or supervisors as to *those* liens and actions."

Section 95. Section 76-115, R.C.M. 1947, is amended to read as follows:

"76-115. **Disposition of funds.** (1) Unless otherwise provided by law, all moneys which may from time to time be appropriated out of the state treasury to pay the administrative and other expenses of conservation districts shall be allocated by the *department* among the districts already organized, or to be organized, during the ensuing biennial fiscal period, in accordance with the procedure specified in subsection (2) of this section. All moneys allocated to a district by the *department* shall be available to the supervisors of the district for all administrative and other expenses of the district under this act and for all administrative and other expenses of the board of adjustment established or to be established by the district.

(2) Seventy-five per cent (75%) of all moneys which may be appropriated to pay the administrative and other expenses of conservation districts shall be allocated by the *department* among all the districts organized, or to be organized, within the ensuing biennial fiscal period, under this act, in direct proportion to the total acreage of land within each district. The remaining twenty-five per cent (25%) of the moneys shall be allocated by the *department* among the districts on such basis of allocation as is fair, reasonable, and in the public interest, giving due consideration to the greater relative expense of carrying on operations within the particular districts because of such factors as unusual topography, unusual severity of erosion, special difficulty of carrying on operations, special volume of work to be done, and the special importance of instituting erosion control operations immediately. In making allocations of the moneys, the *department* shall retain an amount estimated by it to be adequate to enable it to make subsequent allocations in accordance with this section from time to time among districts which may be organized after the initial allocations are made, but within the ensuing biennial fiscal period.

(3) The *department* shall submit to the *department of administration*, on or before the first (1st) day of *August* of each year preceding a regular session of the legislative assembly a request for an appropriation as provided in the budget act. The request for an appropriation shall state, in addition to the requirements of the budget act, the following:

The number and acreages of districts in existence or in process of organization, together with an estimate of the number and probable acreages of the districts which may be organized during the ensuing biennial fiscal period; a statement of the balance of funds, if any, available to the *department* and to the districts; and the estimates of the *department* as to the sums needed for its administrative and other expenses and for allocation among the several districts during the ensuing biennial fiscal period."

Section 96. Section 76-117, R.C.M. 1947, is amended to read as follows:

"76-117. **Change of district name — division and combination of districts.** (1) Petitions for changing the name of a district organized under this act may be filed with the *department*. The petition shall be signed by a majority of the district supervisors and shall state the present name of the district and the proposed new name. If the *department* determines that the proposed new name is not identical with or so similar to that of any other district in the state as to lead to confusion or uncertainty,

it shall present a statement of *that* determination to the secretary of state, who shall issue to the district a certificate, under the seal of the state, evidencing the change of name of the district. Upon the issuance of *the* certificate, the supervisors of the district shall cause due notice to be given of the change of the name of the district.

(2) A petition may be filed with the *department* for the division of any district or the combination of any two (2) or more districts, or for the division of a district and the combination of any divided part thereof with any other district. Any or all of *these* actions may be initiated by the filing of a single petition with the *department*. *The* petition shall be signed by a majority of the members of each of the governing bodies of the affected districts. The *department* shall prescribe the form for *the* petition. Upon the filing of *the* petition, the *department* shall within thirty (30) days give due notice of public hearing upon *the* petition. All qualified electors within the affected districts, and all other interested parties, *are entitled* to attend *the* hearing and be heard. After *the* hearing, the *board of natural resources and conservation upon the record of the hearing* shall determine whether the proposed division, the combination or division and combination of territory is administratively practicable and feasible. In making *the* determination the *board* shall give due regard to the legislative determinations set forth in section 76-102 and to the considerations enumerated in section 76-105, to the extent applicable, relative to determining the practicability and feasibility of creating a district.

(3) If the *board determines* that the proposed division or combination, or division and combination, is administratively practicable and feasible, the *board* shall effect *the* proposed division, combination, or division and combination by filing with the secretary of state a statement certifying the changes made in the boundaries of the affected districts, together with any change in the name of *the* districts. If *the* determination is in the negative the *board* shall make and record *that* determination and shall deny the petition. After six (6) months from the denial of *the* petition, a new petition may be filed.

(4) Upon the division of a district, the supervisors thereof shall allocate the property, rights and liabilities, including contractual obligations, of the district among the resulting parts of the district, giving due consideration to the proportionate size of each divided part, the number of qualified electors and operating units and the degree and extent of soil erosion therein, and other relevant factors. A statement of *the* allocation shall be filed with the *department* within thirty (30) days after the notification of the *board's* determination in favor of the division of the district. Upon the failure of the supervisors to make, or to agree upon, *the* allocation, it shall be made by the *department* after such hearing as the *department considers* necessary, and with due regard for the standards set out in this paragraph for making *the* allocations."

Section 97. Section 81-1401, R.C.M. 1947, is amended to read as follows:

"81-1401. **Classification of lands as state forests.** All lands at present owned by the state, and all that may hereafter be acquired by the state through escheat, exchange, purchase, grant or devise, which are



principally valuable for the timber that is on them, or for the growing of timber or for watershed protection, are hereby classified and designated "state forests," and reserved for forest production and watershed protection."

Section 98. Section 81-1404, R.C.M. 1947, is amended to read as follows:

**"81-1404. Sale of timber — advertising for bids — purchaser's agreement.** Under the direction of the state board of land commissioners, the *department of natural resources and conservation* may sell the timber crop and other crops of the forests, after examination, estimate, appraisal and report, and under such rules as may be established by the board; timber proposed for sale in excess of 100,000 feet board measure shall be advertised in a paper of the county in which the timber is situated for a period of at least thirty (30) days, during which time the *department of natural resources and conservation* shall receive sealed bids up to the hour of the closing of the bids, as specified in the notice of sale. *The department of natural resources and conservation* may reject any or all bids, upon approval of the board; or *it* shall award the sale to the highest responsible bidder. Upon award of sale the purchaser shall execute a formal agreement, approved by the board, which *describes* the area on which the timber is to be cut, the approximate quantity to be cut by species, the rate for each product of each species, and *it* shall stipulate that all timber shall be paid for in advance of cutting, fix a date for termination of the agreement, and define rules of silviculture, cutting, utilization, scaling and slash disposal, and such other rules as in the discretion of the board are essential to the perpetuation of the state forests."

Section 99. Section 81-1406, R.C.M. 1947, is amended to read as follows:

**"81-1406. Breach of timber sale agreement.** For breach of timber sale agreement, the *department of natural resources and conservation* may suspend cutting or removal of the timber, and take such steps as are advisable upon advice and counsel of the attorney general to adjust the breach or to liquidate the state's claim for damages, or *it* may submit the case with full report as to damages sustained by the state to the attorney general for collection on the bond."

Section 100. Section 81-1408, R.C.M. 1947, is amended to read as follows:

**"81-1408. Duties concerning lumber cutting — scaling.** *The department of natural resources and conservation shall* supervise all the *management* of timber before it is cut, and secure the most complete utilization of all forest products consistent with the current *forest management practices*. It shall instruct and supervise the cruisers, forest wardens and scalers in the conduct of their work; and fix and establish the standard practice in timber sales administration. *It* shall require that each merchantable log be scaled by the Scribner decimal C. log rule at the small end on the average diameter inside bark taken to the nearest inch, and that deduction be made for *any* apparent defect, or *it* shall fix and determine converting factors and units of measure for all forest products,

which shall be as nearly as practical equivalent to the Scribner decimal C. log scale. Records of converting factors, units of measure and the scale of logs shall be kept as a permanent public record showing the date of scale or measurement, the designation of the scale and the name of the scaler. Where the volume of timber involved is not in excess of one million (1,000,000) board feet log scale, the *department of natural resources and conservation* may designate each tree to be cut and make a tree scale measurement of all trees to be sold."

Section 101. Section 81-1409, R.C.M. 1947, is amended to read as follows:

"81-1409. **Cooperation with owners and lessees.** For the purpose of more adequately promoting and facilitating the *cooperation*, financial and otherwise, between the state and all of the public and private agencies or individuals therein, the *department of natural resources and conservation* may cooperate with owners or lessees of farm, range, forest, watershed or other uncultivated lands in private and public ownership for the protection from fire of the cultivated agricultural crops or natural resources existing or growing thereon; and also in the conservation and perpetuation of such lands and resources, including the prevention of soil erosion and the regulation of stream flow."

Section 102. Section 81-1411, R.C.M. 1947, is amended to read as follows:

"81-1411. **Duties of department of natural resources and conservation.** The *department of natural resources and conservation* shall, under the direction and control of the state board of land commissioners, do all the field work in the selection, location, examination, appraisement, and reappraisement of state timberlands. *It* shall do all acts required of *it* by the board, and under the direction of *the* board *it* has general charge of the timberlands of the state. *It* shall, under the supervision of the board, execute all matters pertaining to forestry within the jurisdiction of the state; have charge of all firewardens of the state and direct and aid them in their duties; direct the protection, improvement and condition of state forests; take such action as is authorized by law to prevent and extinguish forest, brush and grass fires; enforce the laws pertaining to forest and brushcover lands, and prosecute for any violation of *those* laws. *It* shall furnish notices, *printed* in large letters, calling attention to the danger from forest fires, and to the forest fire and trespass laws, and their penalties. *These* notices shall be posted by the firewarden in conspicuous places in the several counties of the state, and particularly in brush and forest-covered country, at frequent intervals along streams and lakes frequented by tourists, hunters, and fishermen, at established camping sites, and in every post office in the forested region."

Section 103. Section 81-1412, R.C.M. 1947, is amended to read as follows:

"81-1412. **Firewardens.** The *department of natural resources and conservation* shall appoint in such number and localities as *it* considers wise, public-spirited citizens to act as volunteer firewardens. Every sheriff, undersheriff, deputy sheriff, *state fish and game* warden, and

*state fish and game director is ex officio a firewarden, but may not receive any additional compensation by reason of the duties hereby imposed, and they shall be considered paid firewardens under the terms of this act. The supervisors and rangers of the federal forest lands within this state whenever they formally accept the duties and responsibilities of firewardens, may be appointed volunteer firewardens, and have all the powers given to firewardens by this act. The firewardens shall promptly report all fires to the department of natural resources and conservation, take immediate and active steps toward their extinguishment, report any violation of forest laws, and assist in apprehending and convicting offenders."*

Section 104. Section 81-1413, R.C.M. 1947, is amended to read as follows:

"81-1413. **Powers of firewardens.** All firewardens have the power of peace officers to make arrests without warrants for violations, in their presence, of any state or federal forest laws, and a firewarden is *not* liable for civil action for trespass committed in the discharge of his duties. A firewarden who has information which shows, with reasonable certainty, that a person has violated any provision of *those* forest laws, shall immediately take action against the offender, by making complaint before the proper magistrate, or by information to the proper county attorney, and shall obtain all possible evidence pertaining thereto. Failure on the part of a paid firewarden to comply with the duties prescribed in this act is a misdemeanor, and punishable by a fine of not less than twenty dollars (\$20) nor more than one thousand dollars (\$1,000), or imprisonment in the county jail for not less than ten (10) days nor more than twelve (12) months, or by both such fine and imprisonment; and upon his conviction, the district court wherein he is convicted shall *immediately* declare his office vacant, and notify the proper appointing power thereof."

Section 105. Section 81-1415, R.C.M. 1947, is amended to read as follows:

"81-1415. **Duties of firewardens and foresters.** The *department of natural resources and conservation* and all firewardens (except volunteer wardens), under such rules as the state board of land commissioners may provide, shall protect the timber of the state, and especially the timber owned by the state, from destruction by fire, and for such purpose, in emergencies, may employ men and incur other expenses when necessary."

Section 106. There is a new section to be numbered 28-801, R.C.M. 1947, which reads as follows:

28-801. **Definitions.** Unless the context requires otherwise, in this chapter:

(1) "Department" means the department of natural resources and conservation provided for in Title 82A, chapter 15.

(2) "Portable sawmill" means a sawmill located upon forest land within the state and having a rated capacity of less than five thousand (5,000) feet per hour of operation.

Section 107. Section 81-1501, R.C.M. 1947, is renumbered section 28-802, and is amended to read as follows:

**"28-802. Portable sawmill license required.** *It is unlawful to operate a portable sawmill located upon forest lands within the state without first obtaining a license therefor from the department."*

Section 108. Section 81-1502, R.C.M. 1947, is renumbered 28-803, and is amended to read as follows:

**"28-803. Application for license — fee.** Whenever a person, firm or corporation desires to commence the operation of a portable sawmill located or to be located upon forest lands within the state, *that* person, firm or corporation shall *apply* to the *department* in writing for a license to operate the portable sawmill. The application shall *include* the name of the person, firm or corporation contemplating the operation of the sawmill, the location thereof by section, township and range numbers, the rated capacity of the sawmill and the approximate amount of stumpage to be cut at the proposed setting and the approximate date desired for the commencement of the operation. The application shall be accompanied by the payment of a fee of two dollars (\$2.00), which is fixed as the license fee for the operation of any portable sawmill, to be credited to the *federal and private grant clearance fund*."

Section 109. Section 81-1503, R.C.M. 1947, is renumbered 28-804, and is amended to read as follows:

**"28-804. Issuance of license — term.** Upon receipt of *the* application and the payment of the fee the *department* shall issue a license to the person, firm or corporation applying therefor. *The* license shall be upon a form provided by the *department* and shall cover such period as *the* sawmill *remains* in continuous operation on a single setting or location, or until revocation by the *department*."

Section 110. Section 81-1504, R.C.M. 1947, is renumbered 28-805, and is amended to read as follows:

**"28-805. Revocation of license for violation of law.** Whenever it *appears* that there is a violation of any law of the state enacted for the protection of forest and forest lands in connection with the operation of a portable sawmill or in the protection of the lands from which the timber sawed or to be sawed at a mill is cut, the *department may* revoke the license and thereby suspend the operation of a sawmill until the conditions constituting a violation of law *are* remedied and removed."

Section 111. Section 81-1506, R.C.M. 1947, is renumbered 28-806, and is amended to read as follows:

**"28-806. Penalty for violations.** A person, firm or corporation violating this act *is* guilty of a misdemeanor and shall be fined not less than twenty-five dollars (\$25) nor more than five hundred dollars (\$500), which fines are to be credited to the general school funds of the state; this act shall not be construed to in any manner affect the civil liability of any person in connection with the origin or spread of fire in the forest lands of the state."

Section 112. Section 81-2009, R.C.M. 1947, is renumbered 89-142, and is amended to read as follows:

**"89-142. Department of natural resources and conservation authorized to negotiate with other states regarding interstate**

**waters.** *The department of natural resources and conservation may negotiate with the duly constituted authorities or agencies of other states and of the United States in the preparation of interstate compacts or agreements governing the use, distribution and allocation of the water of any stream or streams flowing from Montana into such other states or flowing from such other states into Montana. It shall cooperate with other states and with the United States in making the necessary studies and obtaining the data necessary to the preparation of the compacts. This authority and the duties hereby imposed are limited to the preparation and proposal of the compact and the compact or agreement is not binding upon the state of Montana until approved by the legislature of Montana and the legislatures of the other state or states involved in the compact.*

Section 113. Section 81-2018, R.C.M. 1947, is amended to read as follows:

**"81-2018. Appropriation of water by state.** The state board of land commissioners *may*, through the *department of natural resources and conservation*, at its discretion, appropriate any available waters for use upon state lands, and authorize the construction of irrigation *works* for *these* lands. The appropriation shall be made in the same way and under the same laws as those governing the appropriation of water by individuals."

Section 114. Section 82A-1501, R.C.M. 1947, is amended to read as follows:

**"82A-1501. Department of natural resources and conservation — creation — head.** There is a department of natural resources and conservation. The department head is the director of natural resources and conservation *appointed by the governor in accordance with section 82A-106.*"

Section 115. There is a new section to be numbered 82A-1501.1, R.C.M. 1947, which reads as follows:

**82A-1501.1. Functions of department.** The department and its units are responsible for administering laws pertaining to natural resources, including, but not limited to, laws pertaining to:

- (1) Forests and forestry (Title 28, chapter 1);
- (2) Disposal of slashings and forest debris (Title 28, chapter 4);
- (3) Portable sawmill regulation (Title 28, chapter 8);
- (4) Grass conservation (Title 46, chapter 23);
- (5) Conservation of oil and gas (Title 60, chapter 1);
- (6) Underground gas storage (Title 60, chapter 8);
- (7) Utility sites (Title 70, chapter 8);
- (8) Soil and water conservation (Title 76, chapter 1);
- (9) State forests (Title 81, chapter 14);
- (10) Water for state lands (Title 81, chapter 20);
- (11) Water resources (Title 89, chapter 1);
- (12) Weather modification (Title 89, chapter 3);
- (13) Water conservation moneys (Title 89, chapter 4);
- (14) Examination of dams and reservoirs (Title 89, chapter 7);
- (15) Water rights (Title 89, chapter 8);
- (16) Yellowstone river compact (Title 89, chapter 9);
- (17) Irrigation districts (Title 89, chapter 12);
- (18) Regulation of groundwater (Title 89, chapter 29);
- (19) Conservancy districts (Title 89, chapter 34).

Section 116. Section 82A-1508, R.C.M. 1947, is amended to read as follows:

**"82A-1508. Board of oil and gas conservation — composition — allocation — designation.** (1) *There is a board of oil and gas conservation.*

(2) *The board consists of five (5) members, two (2) of whom shall be from the oil and gas industry and have had at least three (3) years' experience in the production of oil and gas.*

(3) *The board is allocated to the department for administrative purposes only as prescribed in section 82A-108. However, the board may hire its own personnel, and section 82A-108(2)(d) does not apply.*

(4) *The board is designated as a quasi-judicial board for purposes of section 82A-112."*

Section 117. Section 82A-1509, R.C.M. 1947, is amended to read as follows:

**"82A-1509. Board of natural resources and conservation — creation — composition — designation.** (1) *There is a board of natural resources and conservation.*

(2) *The board is composed of seven (7) members, appointed by the governor as prescribed in section 82A-112, informed and experienced in the subjects of natural resources and conservation.*

(3) *The board is designated as a quasi-judicial board for purposes of section 82A-112.*

(4) *The board is allocated to the department for administrative purposes only as prescribed in section 82A-108.*

(5) *In addition to carrying out its functions as provided by law, the board shall act in an advisory capacity to the department in all other matters."*

Section 118. Section 89-101.1, R.C.M. 1947, is amended to read as follows:

**"89-101.1. Short title.** *This chapter shall be known and may be cited as the "Montana Water Resources Act."*

Section 119. Section 89-101.2, R.C.M. 1947, is amended to read as follows:

**"89-101.2. State necessity and policy.** *It is hereby declared that:*

(1) *The general welfare of the people of Montana, in view of the state's population growth and expanding economy, requires that water resources of the state be put to optimum beneficial use and not wasted.*

(2) *The public policy of the state is to promote the conservation, development and beneficial use of the state's water resources to secure maximum economic and social prosperity for its citizens.*

(3) *The state, in the exercise of its sovereign power, acting through*

the *department of natural resources and conservation* shall *coordinate* the development and use of the water resources of the state so as to effect full utilization, conservation and protection of its water resources.

(4) The development and utilization of water resources, and the efficient, economic distribution thereof, are vital to the people in order to protect existing uses and to assure adequate future supplies for domestic, industrial, agricultural and other beneficial uses.

(5) The water resources of the state must be protected and conserved to assure adequate supplies for public recreational purposes and for the conservation of wildlife and aquatic life.

(6) The public interest requires the construction, operation and maintenance of a system of works for the conservation, development, storage, distribution and utilization of water, which construction, operation and maintenance is a single object and is in all respects for the welfare and benefit of the people of the state.

(7) It is necessary to *coordinate* local, state and federal water resource development and utilization plans and projects through a single agency of state government, *the department of natural resources and conservation*.

(8) The greatest economic benefit to the people of Montana can be secured only by the sound *coordination* of development and utilization of water resources with the development and utilization of all other resources of the state.

(9) To achieve these objectives, and to protect the waters of Montana from diversion to other areas of the nation, it is essential that a comprehensive, *coordinated* multiple-use water resource plan be progressively formulated, to be known as the "state water plan."

Section 120. Section 89-102, R.C.M. 1947, is amended to read as follows:

"89-102. **Definitions.** *Unless the context requires otherwise, in this chapter:*

(1) "*Department*" means the department of natural resources and conservation provided for in Title 82A, chapter 15.

(2) "*Board*" means the board of natural resources and conservation provided for in section 82A-1509.

(3) "*Works*" means all property, rights, easements and franchises relating thereto and deemed necessary or convenient for their operation, and all water rights acquired or exercised by the *department* in connection with *those* works, and *includes* all means of conserving and distributing water, including, without limiting the generality of the foregoing, reservoirs, dams, diversion canals, distributing canals, waste canals, drainage canals, dikes, lateral ditches and pumping units, mains, pipelines and waterworks systems and *includes* all such works for the conservation, development, storage, distribution and utilization of water including, without limiting the generality of the foregoing, works for the purpose

of irrigation, flood prevention, drainage, fish and wildlife, recreation, development of power, watering of stock, supplying of water for public, domestic, industrial or other uses, and for fire protection.

(4) "*Cost of works*" means the cost of construction, the cost of all lands, property, rights, easements and franchises acquired, which are deemed necessary for *the* construction, the cost of all water rights acquired or exercised by the *department* in connection with *those* works, the cost of all machinery and equipment, financing charges, interest prior to and during construction and for a period not exceeding three (3) years after the completion of construction, cost of engineering and legal expenses, plans, specifications, surveys, estimates of cost, and other expenses necessary or incident to determining the feasibility or practicability of any project, administrative expense and such other expenses as may be necessary or incident to the financing herein authorized and the construction of the works and the placing of the same in operation; however, the *department* in determining the cost of works may make nonreimbursable allowances for costs of public benefits, including, but not limited to, irrigation, recreation, flood prevention, fish and wildlife, and stream stabilization.

(5) "*Owner*" means all individuals, irrigation districts, drainage districts, flood control districts, incorporated companies, societies or associations having any title or interest in any properties, rights, easements or franchises to be acquired.

(6) "*Project*" means any one of the works hereinabove defined or any combination of such works which are physically connected or jointly managed and operated as a single unit.

(7) *If water rights are acquired or exercised by the department in connection with two (2) or more works or projects, the department by order shall apportion or allocate to each of the works or projects such part of those water rights as it may determine, and upon the adoption of the order, those water rights shall be considered a part of each of the works or projects to the extent that the water rights have been so apportioned or allocated thereto respectively.*

Section 121. There is a new section to be numbered 89-102.1, R.C.M. 1947, which reads as follows:

89-102.1. **Rules of board.** The board may adopt from time to time, as necessary or expedient, suitable rules for the administration of this chapter.

Section 122. Section 89-103.2, R.C.M. 1947, is amended to read as follows:

"89-103.2. **Powers and duties of department subject to approval of board.** *The department may not acquire by appropriation or otherwise a water right or interest therein and may not acquire real property or an interest therein (except rights of access for the purpose of construction, operation, or maintenance of works) or mortgage or otherwise create a lien on the same or dispose of in any manner water rights or real property or interest therein without prior approval of the board. The department*



*may not construct or cause to be constructed or contract for the construction of works or projects without prior approval of the board. The department may not loan funds to a person or water user association for the purpose of constructing or maintaining works without prior approval of the board."*

Section 123. Section 89-104, R.C.M. 1947, is amended to read as follows:

**"89-104. Acquisition of necessary property.** (1) *The department, subject to the approval of the board under section 89-103.2, may acquire by purchase, or exchange upon terms and conditions and in a manner it considers proper, and acquire by condemnation in accordance with laws applicable to the condemnation of property for public use, any land, rights, water rights, easements, franchises and other property considered necessary for the construction, operation and maintenance of works. Title to property purchased or condemned shall be taken in the name of the department. The department is under no obligation to accept and pay for any property condemned under this act except from the funds provided by this act, and in any proceedings to condemn, orders may be made by the court having jurisdiction of the suit, action or proceeding as may be warranted by law and the facts.*

(2) *In condemnation proceedings brought under the powers of eminent domain for the purpose of carrying out this act, all persons interested in the title of or holding liens upon the property sought to be acquired as disclosed by the public records, shall be made parties, and the court in the action shall partition and distribute the damages awarded, if any, among those persons as their rights appear. If there is controversy between them the court may direct the amount of the damage awarded to be paid into court to abide the result of further appropriate proceedings either at law or in equity.*

(3) *The taking possession of the property sought to be condemned may not be delayed by reason of any dispute between the rival claimants or the failure to join any of them as a party to the proceedings in condemnation."*

Section 124. Section 89-105, R.C.M. 1947, is amended to read as follows:

**"89-105. Power of department to construct works and to act beyond jurisdiction.** (1) *Subject to the approval of the board, the department may construct works, the cost of the construction to be paid wholly by means of or with the proceeds of revenue bonds hereinafter authorized or of a grant to aid in financing the construction from the United States or any instrumentality or agency thereof and of other funds provided under the authority of this act. Before constructing a project, the department shall estimate the cost of the project, the cost of maintaining, repairing and operating it, and the revenues to be derived therefrom, and a project may not be constructed unless, according to the estimates, the revenues to be derived will be sufficient to pay the cost of maintaining, repairing and operating it, and to pay the principal and interest of revenue bonds which may be issued for the cost of the project; however, in connec-*

tion with the issuance of *revenue* bonds, the failure of the *department* to make the estimates required by this section or to make *them* in proper form *does not* affect the validity or enforceability of *those* bonds or of the trust indenture, resolution or other security therefor.

(2) However, should the bid of the lowest responsible bidder on any capital improvement associated with public works as defined in this section exceed the department estimates of the cost of the improvements by more than five per cent (5%), the department shall obtain approval from the *water* user association before the bid is accepted; however, capital improvements of an emergency nature necessary to protect life or property or to supply immediate needs for water do not require such approval.

(3) The purpose of this act is to meet, so far as possible, a state-wide need for the conservation and use of water, through the construction and operation of projects designed for *those* purposes. The *department* may make investigations as *are* necessary to plan and carry out a comprehensive state-wide program of water conservation. The projects to be finally constructed shall qualify as parts of *the* state-wide program and shall be approved by the board upon the showing of their prospective ability to meet, through the sale of water or other services, the cost of operation, maintenance and repair and the amortization of the cost of the construction; however, the failure of the board to determine *the* prospective ability of a project *does not* affect the validity or enforceability of *the* bonds or of the trust indenture, resolution, or other security therefor.

(4) The *department* may exercise any of its powers:

(a) In *an* adjoining state, unless the exercise of *that* power is not permitted under the laws of *that* state or of the United States.

(b) In *a* national forest or public domain of the United States adjoining, or located in, the state of Montana, unless the exercise of *those* powers is not permitted under the laws of the United States.

(c) In *an* adjoining country unless the exercise of *those* powers is not permitted under the laws of *that* country or of the United States or under the treaties between *that* country and the United States."

Section 125. Section 89-106, R.C.M. 1947, is amended to read as follows:

**"89-106. Department may construct irrigation works across streams, highways, etc.** (1) The *department* may construct irrigation works across any stream of water, watercourse, streets, avenues, highways, railways, canals, ditches or flumes in such manner as to afford security to life and property. The *department* shall restore the same, when so crossed or intersected, to its former state, as near as may be, so as not to destroy its usefulness. A company whose railroads *are* intersected or crossed by *the* works shall unite with *the department* in forming the intersection and crossing. If the railroad company and *the department*, or the owners and controllers of *the* property, thing, or franchise so to be crossed cannot agree upon the amount to be paid therefor, or the points or the manner of *the* crossing or intersections, the *amount* shall be ascertained and determined in all respects as herein provided in respect to taking of land for public use.

(2) *This section does not* require the payment to the state or any subdivision thereof, of a sum for the right to cross a public highway with *the* works. A right of way is hereby given, dedicated, and set apart to locate, construct, and maintain *the* works over and through the lands which are the property of this state."

Section 126. Section 89-111, R.C.M. 1947, is amended to read as follows:

"89-111. **Trust indenture, resolution and covenants of board.** (1) In the discretion of the board, a series of *the* bonds may be secured by a trust indenture by and between the board and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or outside of the state. Each trust indenture or an executed counterpart thereof shall be filed in the office of the secretary of state of Montana. The filing of a trust indenture or an executed counterpart thereof in the office of the county clerk of the county in which the property covered by *the* trust indenture is located *is* constructive notice of *its* contents to all persons from the time of *the* filing, and *the* recording of *the* trust indenture or *its* contents *is not* necessary.

(2) Either the resolution providing for the issuance of bonds or *the* trust indenture may contain provisions for protecting and enforcing the rights and remedies of the bondholders as *are* reasonable and proper, not in violation of law, including covenants setting forth the duties of the state, the board, and *the department* in relation to the acquisition, construction, improvement, maintenance, operation, repair, and insurance of the works, the custody, safeguarding and application of all moneys, and *it* may provide that the works shall be acquired, constructed, or partly acquired and partly constructed and paid for under the supervision and approval of consulting engineers employed or designated by the *department* and satisfactory to the original purchasers of the bonds issued therefor, their successors, assigns, or nominees, who may be given the right to require that security given by contractors and by any depositary of the proceeds of the bonds or receipts and revenues of the works, or other moneys pertaining thereto, shall be satisfactory to *the* purchasers, successors, assigns, or nominees. *The* resolution or indenture may set forth the rights and remedies of the bondholders and trustee, restricting the individual rights of action of bondholders as is customary in trust indentures, deeds of trusts and mortgages securing bonds or debentures of corporations. No enumeration of particular powers hereby granted shall be construed to impair any general grant of power herein contained. All expenses incurred in carrying out *the* trust indenture may be treated as a part of the cost of maintenance, operation and repairs of the works affected by *the* indenture.

(3) In connection with the issuance of *the* bonds for the purpose of paying in whole, or as supplemented by a grant from the United States or any instrumentality or agency thereof, the cost of *the* works or project, or in order to secure the payment of *the* bonds, the board *may*:

(a) *Pledge* all or any part of the income, profit and revenue of *the* works or project, and all moneys received from the sale or disposal of water, use of water, water storage, or other service, and from the oper-

ation, lease, sale or other disposition of all or any part of *the* works or project, and covenant to pay *the* income, profit and revenue into the appropriate water fund and sinking fund.

(b) *Covenant* against pledging all or any part of the income, profit and revenue of *the* works or project and all moneys received from the sale or disposal of water, use of water, water storage, or other service, and from the operation, lease, sale or other disposition of all or any part of *the* works or project.

(c) *Covenant* against mortgaging all or any part of *the* works or project, or against permitting or suffering any lien thereon.

(d) *Covenant* to fix and establish such prices, rates and charges for water and other services made available in connection with *the* works or project so as to provide at all times funds which will be sufficient, (1) to pay all costs of operation and maintenance of *the* works or project together with necessary repairs thereto, and (2) to meet and pay the principal and interest of all *the* bonds as they severally become due and payable, and (3) to create such reserves for the principal and interest of all *the* bonds and for the meeting of contingencies in the operation and maintenance of *the* works or project as the board *determines*; and make such further covenants as to such prices, rates and charges as the board *determines*.

(e) *Create* special funds, in addition to those required by this act, for moneys reserved for principal and interest on bonds or for the meeting of contingencies in the operation and maintenance of *the* works or project and determine the manner in which, and the depository or depositories in which, *those* funds shall be deposited and the manner in which *they* shall be secured, and it *is* lawful for any bank or trust company incorporated under the laws of the state to act as *that* depository and to furnish such indemnifying bonds or to pledge such securities as required by the board.

(f) *Provide* for the replacement of lost, destroyed or mutilated bonds.

(g) *Covenant* against extending the time for the payment of the principal or interest on any of *the* bonds, directly or indirectly by any means or in any manner.

(h) *Prescribe* and covenant as to the events of default and terms and conditions upon which any or all of *the* bonds shall become or may be declared due before maturity and as to the terms and conditions upon which *the* declaration and its consequences may be waived.

(i) *Covenant* as to the rights, liabilities, powers, and duties arising upon the breach by it of any covenant, condition, or obligation.

(j) *Vest* in a trustee or trustees the right to enforce any covenant made to secure or to pay *the* bonds, or to foreclose any trust indenture in relation thereto, provide for the powers and duties of *the* trustee or trustees, limit the liabilities thereof, and provide the terms and conditions upon which the trustee or trustees or the holders of bonds or any proportion of them may enforce *the* covenant or exercise the right of foreclosure.

(k) *Make* such covenants and do any and all such acts and things as may be necessary or convenient or desirable in order to secure *the* bonds, or, in the absolute discretion of the board, to make *the* bonds more marketable, notwithstanding that *the* covenants, acts or things may not be enumerated or expressly authorized herein.

(1) *Do* all things in the issuance of *the* bonds, and *provide* for their security, not inconsistent with the constitution of Montana."

Section 127. Section 89-113, R.C.M. 1947, is amended to read as follows:

"89-113. **Funds.** The board shall create a fund to be known as "administration fund" and shall also create three (3) separate funds in respect of the bonds of each series, one (1) fund to be known as the "construction fund, series .....", another fund to be known as the "water fund, series .....", and another fund to be known as the "sinking fund, series .....", each fund to be identified by the same series letter or letters as the bonds of *the* series. The moneys in each fund shall be deposited in such depository or depositories and secured in such manner as determined by the board. It is lawful for any bank or trust company incorporated under the laws of this state to act as *the* depository and to furnish such indemnifying bonds or to pledge such securities as may be required by the board. A separate account shall be kept in each construction fund and in each water fund for each project. All expenditures not properly chargeable to the construction fund account or to the water fund account of any one project shall be charged by the *department* in such proportions as it shall determine to the construction fund accounts or to the water fund accounts, as the case may be, of the projects in respect of which *the* expenditures were incurred."

Section 128. Section 89-114, R.C.M. 1947, is amended to read as follows:

"89-114. **Construction funds.** The proceeds of the bonds of each series issued under this act shall be placed to the credit of the appropriate construction fund, which fund shall at all times be kept segregated and set apart from all other funds. There shall also be credited to the appropriate construction fund all accrued interest upon the bonds and the interest received upon the deposits of moneys in *the* fund and moneys received by way of grant from the United States or from any other source for the construction of the works. The moneys in each construction fund shall be paid out or disbursed in such manner as may be determined by the *department*, subject to this act, to pay the cost of the works. Any surplus which may remain in any construction fund after providing for the payment of the cost of the works shall be added to and become a part of the appropriate sinking fund hereinafter provided for."

Section 129. Section 89-115, R.C.M. 1947, is amended to read as follows:

"89-115. **Water funds — rates — sale of water — appeals to board — lease and sale of water rights and property.** (1) *Subject to this act and section 89-103.2, the department may fix and establish the prices, rates and charges at which the resources and facilities made available*

under this act *may* be sold and disposed of; enter into contracts and agreements, and do *those* things which in its judgment are necessary, convenient or expedient for the accomplishment of the purposes and objects of this act, under such general regulations and upon such terms, limitations and conditions as it *prescribes*; *the department shall* enter into the contracts and fix and establish *the* prices, rates and charges so as to provide at all times funds which will be sufficient to pay all costs of operation and maintenance of the works authorized by this act, together with necessary repairs thereto, and which will provide at all times sufficient funds to meet and pay the principal and interest of all bonds or loans as they severally become due and payable; this act *does not* authorize any change, alteration or revision of *those* rates, prices or charges as established by any contract entered into under this act except as provided by *the* contract.

(2) An incorporated water users' association that is sustaining and responsible for the operations of a works is solely liable for any court action which may be brought against it or the state of Montana for any injury or damages occurring on the works caused by a failure to maintain safe working and operating conditions.

(3) A contract made by the *department* for the sale of water, use of water, water storage or other service, or for the sale of any property or facilities, shall provide that in the event of a failure or default in the payment of moneys specified in the contract to be paid to the *department*, the *department* may, upon notice as is prescribed in the contract, terminate the contract and all obligations thereunder. The act of the *department* in ceasing on default to furnish or deliver water, use of water, water storage or other service under the contract *does not* deprive the *department* of, or limit any remedy provided by the contract or by law for the recovery of moneys due or which may become due under the contract.

(4)(a) A person aggrieved by a decision of the *department* to terminate any contract under subsection (3) may appeal to the board and be heard thereon by filing written notice of the appeal with the *department* within ten (10) days after receiving notice of termination of the contract from the *department*. The termination of the contract shall be stayed if an appeal is taken.

(b) If a dispute arises between the *department* and another party regarding amounts owing or the terms and conditions under a water marketing or water purchase contract, or under a contract for the construction or repair of works, that party may appeal to the board for a hearing thereon and a resolution of the dispute by filing written notice of the appeal with the *department* within thirty (30) days after the final decision of the *department* regarding the dispute.

(5) Subject to the approval of the board under section 89-103.2, the *department* may sell, transfer to water user associations, abandon or otherwise dispose of any rights of way, easements or property when it determines that they are no longer needed for the purposes of this act, or lease or rent the same or otherwise take and receive the income or profit and revenue therefrom. A determination shall be made by the *department* as to the market value of rights of way, easements or property

to be sold, transferred, abandoned or otherwise disposed of. All income or profit and revenue of the works and all moneys received from the sale or disposal of water, use of water, water storage, or other service, and from the operation, lease, sale or other disposition of the works, property and facilities acquired under this act, shall be deposited to the state general fund."

Section 130. Section 89-116.1, R.C.M. 1947, is amended to read as follows:

"89-116.1. **Disposition of moneys received from sale of water.** The outstanding water conservation revenue bonds issued for seventeen (17) major irrigation projects and purchased by the state shall be administered by the *department* for the benefit of the state general fund. All sums received from the sale of water through water purchase contracts or otherwise from *the* seventeen (17) irrigation projects, except those funds which are specifically collected for the operation and maintenance of *the* projects, and all other income or other benefits arising from, out of, or in connection with the ownership of *the* projects from whatever source derived shall be deposited in the state general fund, to be applied on the retirement of *the* bonds and any advances or other indebtedness made for the benefit of the seventeen (17) projects by the *department*."

Section 131. Section 89-117, R.C.M. 1947, is amended to read as follows:

"89-117. **Contracts with the United States.** *The department may enter into contracts and leases with the United States, its instrumentalities or agencies, for the purpose of financing the construction of any works authorized by this act, and may in those contracts or leases authorize the United States, its instrumentalities or agencies, to supervise and approve the construction, maintenance and operation of the works, or any project or portion thereof, until such times as any money expended, advanced or loaned by said United States, its instrumentalities or agencies, and agreed to be repaid thereto by the department, is fully repaid. It is the purpose and intent of this act that the department may accept cooperation from the United States, its instrumentalities and agencies, in the construction, maintenance and operation and in financing the construction, of any works authorized by this act, and the department may do all things necessary in order to avail itself of that aid, assistance and cooperation under federal legislation now or hereafter enacted by Congress.*"

Section 132. Section 89-118, R.C.M. 1947, is amended to read as follows:

"89-118. **Powers and duties of department — actions at law.** (1) *The department shall keep full and complete accounts concerning all matters and things relating to the works and annually shall prepare balance sheets and income and profit and loss statements showing the financial condition of each project, and file copies thereof with the secretary of state. All books and papers pertaining to all matters provided for in this act shall at all reasonable times be open to the inspection of any party interested or any citizen of the state. Except as otherwise provided in this act, the department has full charge and control of the construction, oper-*

ation and maintenance of the works and the collection of all rates, charges and revenues of whatsoever character therefrom. The *department* shall proceed immediately with the construction of the works upon funds being made available therefor and shall prosecute *the* works to completion as rapidly as possible. The *department, with the approval of the board, may* sell, lease and otherwise dispose of all waters which may be impounded under this act, and *the* water may be sold for the purpose of irrigation, development of power, watering of stock or any other purpose. To the extent that it may be necessary to carry out this act, and subject to a compliance with the other provisions of this act, the *department has* full control of all the water of the state not under the exclusive control of the United States and not vested in private ownership, and it shall take such steps as may be necessary to appropriate and conserve the same for the use of the people.

(2) The *department may* institute in any *court* any actions, suits, and special proceedings necessary to enable it to acquire, own, and hold title to lands for dam sites, reservoir sites, water rights, rights of way for diversion and distributing canals, and lateral ditches, and other means of distribution of water, and may also in *any court* institute, maintain, and prosecute to final determination actions, suits and special proceedings necessary to have the water rights adjudicated upon *any* stream or source of water supply from which is derived the water for *the* reservoir, diversion and distributing canals, lateral ditches and other means of distribution of the water. *The department may* join owners of waters appropriated by *a* person, association or corporation from the streams of the state, so that adjudication may be had of all surplus water upon all the streams and sources of water supply of *a* project constructed by *the department*. All costs and expenses of *the* actions, suits or special proceedings shall be paid by *the department* out of funds provided under this act."

Section 133. Section 89-119, R.C.M. 1947, is amended to read as follows:

"89-119. **Actions by trustee and bondholders.** Any holder of any bonds issued under this act or any of the coupons attached thereto, and the trustee, if any, except to the extent the rights herein given may be restricted by resolution passed before the issuance of the bonds or by the trust indenture, may, either at law or in equity, by suit, action, mandamus or other proceeding, including proceedings for the appointment of a receiver, protect and enforce any and all rights granted hereunder or under *the* resolution or trust indenture and may enforce and compel performance of all duties required by this act or by *the* resolution or trust indenture to be performed by the board *or the department*. While any bonds issued by the board remain outstanding the powers, duties or existence of the board or any official or agency of the state shall not be diminished or impaired in any manner that will affect adversely the interests and rights of the holders of *the* bonds."

Section 134. Section 89-120, R.C.M. 1947, is amended to read as follows:

"89-120. **Limitation of liability — receipt of contributions and appropriations authorized.** (1) No liability or obligation shall be incur-



red under this act beyond the extent to which money *is* provided under this act. All public or private property damaged or destroyed in carrying out the powers granted under this act shall be restored or repaired and placed in their original condition, as nearly as practicable, or adequate compensation made therefor out of funds provided by this act.

(2) The *department* may receive and accept appropriations and contributions from any source of either money or property or other things of value, to be held, used, and applied for the purposes in this act."

Section 135. Section 89-124, R.C.M. 1947, is amended to read as follows:

"89-124. **Conformity to federal regulations authorized.** For the purpose of obtaining financial aid from the United States of America, the *department* may adjust the plans and operation of a project, created under this act, to conform to the laws and regulations of the federal government and the supervision of any *agency* constituted under *that* authority, and may exercise *those* powers whenever conferred."

Section 136. Section 89-125, R.C.M. 1947, is amended to read as follows:

"89-125. **Powers of department concerning waters and appropriations thereof.** (1) The authority of the *department* conferred by this act *extends and applies* to rights to the natural flow of the waters of this state which it may acquire, *with the approval of the board*, by condemnation, purchase, exchange, appropriation or agreement.

(2) For the purpose of regulating the diversion of *those* waters, the *department* may enter upon the means and place of use of all appropriators for making surveys of respective rights and seasonal needs.

(3) The *department* may take into consideration the decrees of the courts of this state having jurisdiction, which purport to adjudicate the waters of a stream or its tributaries, and a fair, reasonable, equitable reconciliation shall be made between the claimants asserting rights under different decrees and between decreed rights and asserted rights of appropriation not adjudicated by any court.

(4) The *department*, at its discretion, may hold hearings relating to the rights of respective claimants after first giving such notice as it deems appropriate, and make findings of the date and quantity of appropriation and use of all claimants which the *department* will recognize and observe in diverting the waters which it owns. The *department* may police and distribute to the owner of the recognized appropriation the waters due him upon request and under terms agreed upon.

(5) The *department*, when engaged in controlling and dividing the natural flow of a stream under the authority granted by this act, *is* exercising a police power of the state, and water commissioners appointed by any court *may not* deprive the *department* of any of the waters owned or administered under agreement with respective owners, *but* the owner of a prior right contending that the *department* is not recognizing and respecting the appropriation may resort to a court for the purpose of determining whether or not the rights of the claimant have been invaded, and the *department* shall observe the terms of the final decree.

(6) *When the department impounds or acquires the right of appropriation of the waters of a stream, it may divert or authorize the diversion at any point on the stream, or any portion thereof, when it is done without injury to a prior appropriator.*

(7) *This act does not repeal or amend an existing statute pertaining to the appropriation or use of water except as expressly provided in this act, and this act does not interfere with vested rights to the use of water."*

Section 137. Section 89-127, R.C.M. 1947, is amended to read as follows:

**"89-127. Sale or disposal of waters — disposal of waterworks systems, provision for.** In addition to the powers conferred upon the *department* to sell, lease, or otherwise dispose of waters for the purpose of irrigation, development of power, watering of stock, or other purposes, the *department, with the approval of the board, may sell, lease, or otherwise dispose of waters from its waterworks systems for public, domestic, industrial and other uses and for fire protection. The department may sell or otherwise dispose of a waterworks system which is not operated for the purpose of irrigation or development of power, after the discharge of all of the bonds issued by the board to finance the construction or acquisition thereof and of all interest thereon and costs and expenses incurred in connection with any action or proceeding by or on behalf of the holders of the bonds; however, no such sale or other disposition may be made except to a municipality, political subdivision, authority or other public body of the state."*

Section 138. Section 89-132.1, R.C.M. 1947, is amended to read as follows:

**"89-132.1. State water plan. The department shall:**

(1) Gather from any source reliable information relating to Montana's water resources, and prepare therefrom a continuing comprehensive inventory of the water resources of the state. In preparing *this* inventory, the *department* may conduct studies, adopt studies made by other competent water resource groups including federal, regional, state or private agencies, perform research or employ other competent agencies to perform research on a contract basis, and hold public hearings in affected areas at which all interested parties shall be given an opportunity to appear.

(2) Formulate and *with the approval of the board*, adopt, and from time to time amend, extend or add to, a comprehensive, *coordinated* multiple-use water resources plan, known as the "state water plan." *The state water plan may be formulated and adopted in sections, these sections corresponding with hydrologic divisions of the state. The state water plan shall set out a progressive program for the conservation, development and utilization of the state's water resources, propose the most effective means by which these water resources may be applied for the benefit of the people, with due consideration of alternative uses and combinations of uses. Before adoption of the state water plan, or any section thereof, the department shall hold public hearings in the state, or in an area of the state encompassed by a section thereof if adoption of a section is proposed. Notice of the hearing or hearings shall be published for two (2) consecutive*

weeks in a newspaper of general county circulation in each county encompassed by the proposed plan or section thereof at least thirty (30) days prior to *the* hearing.

(3) Submit to each general session of the legislature the state water plan or any section thereof or amendments, additions or revisions thereto which the *department* has formulated and adopted.

(4) Prepare a continuing inventory of the ground-water resources of the state. *The* ground-water inventory shall be included in the comprehensive water resources inventory described in subsection (1) above, but shall be a separate component thereof.

(5) Publish the comprehensive inventory, the state water plan, the ground-water inventory, or any part of each, and *the department* may assess and collect a reasonable charge for *these* publications.

(6) *The board may adopt rules* necessary to effect the purposes of this act."

Section 139. Section 89-140, R.C.M. 1947, is amended to read as follows:

"89-140. **State agencies and counties may contract with department.** A *state agency* or the boards of county commissioners having jurisdiction over any lands which may require the use of any water or water rights owned or controlled by the *department* or the United States or its agencies, *may* enter into such contracts as are necessary with the *department*, the United States, or agencies of the United States, or others, for the purchase of water or water rights needed for *those* lands, and may enter into any contracts as necessary or expedient, similar to contracts executed by individuals or others, to secure for the state, state institutions, counties and state school and county lands the benefits of *the* water or water rights, which obligations may be similar to those of persons who become stockholders in corporations or who may agree to purchase and pay for water for irrigation purposes. *These contracts* may include agreements that the state and counties shall be subject to the same charges and payments as are other water users within *the* projects; however, none of *those* charges, payments or costs shall constitute a lien against the state's interest in the lands."

Section 140. Section 89-310, R.C.M. 1947, is amended to read as follows:

"89-310. **Definitions.** *Unless the context requires otherwise, in this chapter:*

(1) "Weather modification and control" means changing or controlling, or attempting to change or control, by artificial methods, the natural development of atmospheric cloud forms or precipitation forms which occur in the troposphere.

(2) "Research and development" means theoretical analysis, exploration and experimentation, and the extension of investigative findings and theories of a scientific and technical nature into practical application for experimental and demonstration purposes, including the experimental

production and testing of models, devices, equipment, materials, and processes.

(3) "Department" means the department of natural resources and conservation provided for in Title 82A, chapter 15.

(4) "Board" means the board of natural resources and conservation provided for in section 82A-1509."

Section 141. Section 89-312.1, R.C.M. 1947, is amended to read as follows:

"89-312.1. **Standards for research in weather modification control.** The *board* may establish by rule standards and instructions to govern the carrying out of research and development or projects in weather modification and control as it deems necessary or desirable to minimize danger to health, safety, welfare or property."

Section 142. Section 89-314, R.C.M. 1947, is amended to read as follows:

"89-314. **Department to review applications—exemptions.** The *department* shall review all applications for weather modification activities, and the *board* may provide by rule for exempting from the license and permit requirements of this act:

(1) research, development, and experiments by state and federal agencies, institutions of higher learning and bona fide nonprofit research organizations and their agents;

(2) laboratory research and experiments;

(3) activities of an emergency character for protection against fire, frost, sleet, or fog; and

(4) activities normally engaged in for purposes other than those of inducing, increasing, decreasing, or preventing precipitation or hail."

Section 143. Section 89-317, R.C.M. 1947, is amended to read as follows:

"89-317. **License fee.** A license shall be issued or renewed only upon the payment to the *department* of one hundred dollars (\$100) for the license or renewal."

Section 144. Section 89-318, R.C.M. 1947, is amended to read as follows:

"89-318. **Issuance of permits — requirements for permit — hearing.** (1) The permits shall be issued in accordance with procedures and subject to conditions the board may by rule establish to effectuate this *chapter*, only:

(a) if the applicant is licensed pursuant to this *chapter*;

(b) if sufficient notice of intention is published and proof of publication is filed as required in section 89-322;

(c) if an applicant furnishes proof of financial responsibility in an amount to be determined by the board as required in section 89-323;

(d) if the fee for the permit is paid as required in section 89-324;

(e) if the weather modification and control activities to be conducted are determined by the board to be for the general welfare and the public good.

(2) *The department shall hold a public hearing in the area to be affected by the issuance of the permit, if the board determines that a hearing is necessary. The department may in its discretion assess the permit applicant for the costs incurred by the department in holding the hearing.*"

Section 145. Section 89-320, R.C.M. 1947, is amended to read as follows:

**"89-320. Notice of intention to apply for permit — activities limited by terms of permit.** *Before undertaking any weather modification and control activities, the applicant for a permit shall file with the department, and also have published, a notice of intention. If a permit is issued, the holder of the permit shall confine his activities to the time and area limits set forth in the notice of intention, unless modified by the board. His activities shall conform to any conditions imposed by the board. The permit may not be sold or transferred.*"

Section 146. Section 89-322, R.C.M. 1947, is amended to read as follows:

**"89-322. Publication of notice of intention.** (1) The applicant shall have notice of intention, or that portion thereof including the items specified in section 89-321, published at least once a week for two (2) consecutive weeks in a newspaper having a general circulation and published within any county in which the operation is to be conducted and in which the affected area is located, or, if the operation is to be conducted in more than one (1) county or if the affected area is located in more than one (1) county or is located in a county other than the one in which the operation is to be conducted, then in newspapers having a general circulation and published within each of the counties.

(2) Proof of publication, made in the manner provided by law, shall be filed by the applicant with the *department* sooner than the sixteenth day after the date of the last publication of the notice."

Section 147. Section 89-324, R.C.M. 1947, is amended to read as follows:

**"89-324. Permit fee — time of payment.** The fee to be paid by each applicant for a permit shall be equivalent to one per cent (1%) of the estimated cost of such operation, the estimated cost to be computed by the *department* from the evidence available to it. The fee is due and payable to the *department* as of the date of issuance of the permit *by the board*; however, if the applicant is able to give satisfactory security for the payment of the balance he may be permitted to commence the operation, and a permit may be issued therefor, upon the payment of not less than fifty per cent (50%) of the fee. The balance due shall be paid within three (3) months from the date of termination of the operation as prescribed in the permit."

Section 148. Section 89-325, R.C.M. 1947, is amended to read as follows:

**"89-325. Account in agency fund — fees used to pay expenses.** There is established an account in the agency fund to be known as the "weather modification account." All license and permit fees paid to the *department* shall be deposited in this account and used to pay the expenses of administering this act."

Section 149. Section 89-326, R.C.M. 1947, is amended to read as follows:

**"89-326. Records of operations maintained by licensees.** Every licensee shall keep and maintain a record of all operations conducted by him under his license and each permit, showing:

- (1) *The method employed;*
- (2) *Type of equipment used;*
- (3) *Kinds and amounts of material used;*
- (4) *Times and places of operation of the equipment;*
- (5) *Names and addresses of all individuals participating or assisting in the operation;*
- (6) *Any other general information as the department may require."*

Section 150. Section 89-327, R.C.M. 1947, is amended to read as follows:

**"89-327. Reports of operations.** The *department* shall require written reports, in a manner as it provides, of each operation for which a permit is issued. The *department* shall also require reports from any organization that is exempt from license and permit requirements as provided in section 89-314."

Section 151. Section 89-328, R.C.M. 1947, is amended to read as follows:

**"89-328. Records and reports open to public.** The records and reports in the custody of the *department* shall be open for public examination."

Section 152. Section 89-330, R.C.M. 1947, is amended to read as follows:

**"89-330. State and agents not liable for acts of private persons.** Nothing in this act shall be construed to impose or accept any liability or responsibility on the part of the state, the board, *the department* or any state officials or employees for any weather modification and control activities of any private person or group."

Section 153. Section 89-401, R.C.M. 1947, is amended to read as follows:

**"89-401. Disposition of moneys collected.** For the purpose of carrying out the provisions of the Water Conservation Act, acts amendatory thereto and supplementary thereof, and such other *water resource* authority, powers and duties as are conferred upon the *department of natural*

*resources and conservation* by law, the following moneys shall be deposited in the earmarked revenue fund for the use of the *department*: all sums of money donated or contributed by the federal government or any department or agencies thereof; all gifts, donations, bequests and devises made to the state therefor; and proceeds of the sale thereof; the proceeds of the sale or redemption of and the interest earned by the securities purchased or acquired by the moneys thereof; all reimbursements for money advanced for the payment of the assessments upon state, school granted and other public lands for the improvement thereof as provided by law; all reimbursements for money advanced for the investigation and survey of reclamation, electrification and rehabilitation systems or projects proposed to be financed in whole or in part by the reclamation of lands and dyking, drainage, and dyking and drainage dams for conservation of water to be used in reclamation of land or stock reservoirs or for the construction, maintenance and operation of plants or projects for the manufacture or distribution of electric current; revenues arising from projects constructed or owned by the *department* in excess of costs of operation and maintenance, and repayment of principal and interest of any moneys borrowed for the construction of *the* projects; all sums payable as rentals due for water use, maintenance or operation upon any project owned by the state or for which such rentals are due and payable under any contract or agreement made by any person, association or corporation with the *department*; all sums of money received by the *department* for the use of electric current, in excess of the maintenance and operation upon any electrification system or project; all reimbursements for costs of surveys and investigations for moneys advanced to counties, cities or towns or their proportion of the cost thereof, or from any other sources."

Section 154. Section 89-402, R.C.M. 1947, is amended to read as follows:

"89-402. **Payment of expenses.** From the moneys of the *department* in the earmarked revenue fund there shall be paid, upon vouchers approved by *it*, such sums as are found to be necessary or expedient for the investigation and survey of unreclaimed and undeveloped lands, to determine the relative agricultural value, productiveness, uses and feasibility and cost of the reclamation and development thereof; for the investigation and survey of electrification and rehabilitation systems and projects proposed to be financed in whole or in part by the *department*; such amounts as may be authorized by the *department* for the reclamation of lands by dyking, drainage, dyking and drainage and irrigation districts duly and regularly organized under the laws of this state and such other districts as shall from time to time be authorized by law for the reclamation or development of waste or undeveloped lands; such amounts as may be authorized by the *department* for the construction, maintenance and operation of dams and dykes for the conservation of water for reclamation projects or stock reservoirs, and purchase of rights of way and other costs preliminary to construction of reclamation, stock reservoirs, electrification or rehabilitation systems or projects authorized under the Water Conservation Act or acts amendatory thereof or supplemental thereto, provided that whenever deemed practical the *department* may employ county surveyors in the assistance and preparation of surveys and investigations conducted by the *department*."

Section 155. Section 89-806, R.C.M. 1947, is amended to read as follows:

**"89-806. Diversion of natural flow of waters, when permitted.** Any person, persons, association or corporation, owning or in possession of lands susceptible of irrigation from any stream, the waters of which are so diminished by prior appropriations that a sufficient amount of water for the irrigation of their lands cannot be obtained from the natural flow of the stream, who shall construct a reservoir, or shall purchase or lease water from a reservoir owned by the *department of natural resources and conservation*, or another, or shall otherwise acquire an interest in such reservoir, or in water stored therein, which is so located that because of natural or other obstacles the water impounded therein cannot be conducted to the lands which they desire to irrigate, may, provided the stored water can be discharged into the stream in such a manner that it can be used beneficially by prior appropriators, divert the natural flow of the stream for the irrigation of their lands in lieu of an equal amount of stored water, provided, however, that such exchange can be made without injury to said prior appropriators."

Section 156. Section 89-906, R.C.M. 1947, is amended to read as follows:

**"89-906. Definitions.** *Unless the context requires otherwise, in this act:*

(a) The term "person" *means* any person, corporation, partnership, association, municipal corporation, agency and all others authorized by the laws of the state to appropriate water for beneficial uses.

(b) The term "interstate tributaries" or "interstate tributary" *means* the following described rivers which contribute to the flow of the Yellowstone river in the state of Montana, including all tributaries thereof: the Clark Fork of the Yellowstone river; the Big Horn river (except the Little Big Horn river); the Tongue river; and the Powder river, whose confluences with the Yellowstone river are respectively at or near the city (or town) of Laurel, Big Horn, Miles City, and Terry, all in the state of Montana.

(c) The term "domestic use" *means* the use of water by an individual, or by a family unit or household for drinking, cooking, laundering, sanitation and other personal comforts and necessities; and for the irrigation of a family garden or orchard not exceeding one-half acre in area.

(d) The term "stock water use" *means* the use of water for livestock and poultry.

(e) The term "divert" and "diversion" *means* the taking or removing of water from any interstate tributary or any tributary thereof, when the water so taken or removed is not returned directly into the channel of the interstate tributary or of the tributary thereof from which it is taken.

(f) *"Department" means the department of natural resources and conservation provided for in Title 82A, chapter 15."*

Section 157. Section 89-907, R.C.M. 1947, is amended to read as follows:



"89-907. **Filing written statement with department.** (1) Any person claiming an appropriative right to the use of any water of any interstate tributary which right was acquired after January 1, 1950, shall within sixty days after the approval of this act, or before he diverts any water, file with the *department* at its office in Helena, Montana, a written statement containing the following information:

- (a) The name of the claimant and his address.
  - (b) Date of appropriation or the date when the water was first applied to a beneficial use.
  - (c) The quantity of water claimed.
  - (d) The name of the stream, river or other source of water from which the diversion is made, if it has a name, and if it does not, such a description as will identify the same.
  - (e) The purpose for which the water is claimed and the place of intended use.
  - (f) The means of diversion.
  - (g) Whether or not a weir or other device for measuring the water intended to be diverted has been installed in his ditch or other means of diversion.
  - (h) If a notice of appropriation was filed with the county clerk and recorder, as provided by section 89-810, the name of the county where it was filed.
  - (i) Whether the appropriation was made from an adjudicated or nonadjudicated stream, river or other source of water.
- (2) The written statement shall be verified by the affidavit of the claimant or someone in his behalf, which affidavit must state that the matters and facts contained in the written statement are true."

Section 158. Section 89-908, R.C.M. 1947, is amended to read as follows:

"89-908. **Duty to install weir or other measuring device.** Any person claiming an appropriative right to use any waters of any interstate tributary of the Yellowstone river which right was acquired subsequently to January 1, 1950, shall, after the approval of this act and before he diverts any such water, install in his ditch, or other means of diversion, a weir or other measuring device so that all of the water to be diverted by him can be accurately measured. The installation of a weir or other measuring device is subject to the approval of the *department*, and if in its judgment such weir or other measuring device, or the installation of the same, is defective so that the water cannot be accurately measured, it may order the installation of an accurate measuring device and the claimant shall not divert any water until he complies with such order."

Section 159. Section 89-909, R.C.M. 1947, is amended to read as follows:

"89-909. **Duty to measure water.** *Each* claimant *shall* measure all

the water being diverted by him and keep accurate records thereof on forms prescribed and furnished by the *department*, and within fifteen (15) days after the first day of November of each year file *the* written records with the *department* at its office in Helena, Montana."

Section 160. Section 89-912, R.C.M. 1947, is amended to read as follows:

"89-912. **Board of natural resources and conservation to make rules and regulations.** The board of *natural resources and conservation* shall *adopt* and *the department shall* enforce reasonable rules consistent with this act and the Yellowstone River Compact."

Section 161. Section 89-914, R.C.M. 1947, is amended to read as follows:

"89-914. **Department to make record available.** The *department* shall furnish and make available to the Yellowstone river compact commission, from the records filed in its office, all appropriative rights to the use of the waters of the interstate tributaries of the Yellowstone river in the state of Montana, acquired after January 1, 1950, the amount of the annual diversions from *those* interstate tributaries and any other information that its records may disclose as may be required by the Yellowstone river compact commission."

Section 162. Section 89-915, R.C.M. 1947, is amended to read as follows:

"89-915. **County attorneys to perform certain services.** The county attorneys of the state shall perform such legal services and bring such proceedings in carrying out the purposes of this act within their respective counties as the *department* shall require."

Section 163. Section 89-916, R.C.M. 1947, is amended to read as follows:

"89-916. **Penalty.** Any person who violates or refuses or neglects to comply with any provision of this act, or any order *or* rule *adopted* by the *board or department* pursuant thereto or the Yellowstone River Compact, *is* guilty of a misdemeanor, and upon conviction shall be fined not less than twenty-five dollars (\$25) nor more than two hundred dollars (\$200) for each offense."

Section 164. Section 89-1201, R.C.M. 1947, is amended to read as follows:

"89-1201. **Creation of irrigation districts — percentage of titleholders required — what constitutes evidence of title — report of department of natural resources and conservation — payment of expenses.** (1) Sixty per centum in number of the holders of title or evidence of title to lands sought to be included in an irrigation district and which are susceptible of irrigation, such holders of title or evidence of title also representing sixty per centum of the acreage of said lands, may propose the establishment and organization of an irrigation district under the provisions of this act; provided, however, that when any of such land sought to be included in such irrigation district is covered by mort-

gage or other lien then the owner or owners of such land shall first procure the written consent of the holder of such mortgage or other lien before proposing the establishment and organization of such irrigation district. Irrigation districts may be formed in order to *cooperate* with the United States under the federal reclamation laws heretofore or hereafter enacted, or under any act of Congress which shall permit of the performance by the United States of work in this state, for the purposes of construction of irrigation works, including drainage works, or for purchase, extension, operation, or maintenance of constructed works, or for the assumption, as principal or guarantor, of indebtedness to the United States on account of district lands. When so organized, such district shall have the powers conferred or that may hereafter be conferred, by law upon such irrigation district, provided, however, that *in* all irrigation districts organized in connection with United States reclamation projects a majority of the holders of title or evidence of title to lands sought to be included in such irrigation district under the provisions of the act, may propose the establishment and organization of such district.

(2) The certificate of the county clerk and recorder, or the certificate of the *department of state lands*, shall be sufficient evidence of title for the purpose of this act. Where lands have been purchased from the state and part or all of the purchase money has been paid, but the patents or deeds from the state to such lands have not been issued, the receipt or receipts held by the purchasers, or the certificate of the *department of state lands* showing the payments on account of purchase, shall be evidence of title to such lands under this act.

(3) Before any such district shall be established, there shall be presented to the district court at the hearing on the petition for such establishment, a written report or opinion from the *department of natural resources and conservation* on the engineering features involved and the possibilities of water supplies accompanied by a copy of the decree of the district court showing the adjudicated water rights in said streams from which said waters are to be diverted. For this purpose, a copy of the petition provided for in section 89-1202 and of all maps and other papers filed with the same, shall be filed with the *department* at the time the original petition is filed with the clerk of the district court. The expense, if any, incurred by the *department* in the investigation and report upon the proposed district shall be certified, with the report, and that *the department* shall, within a period of one hundred twenty days from the filing of said petition with the *department*, render its report, as herein provided, to the said district court, and shall be assessed as costs in said hearing, which costs shall be paid by the district in event of its establishment and in event such petition be denied, then such costs shall be paid by the petitioners; provided, however, that such report or opinion shall be not requested or obtained, and shall not be necessary, whenever it is proposed to *cooperate* with the United States under the federal reclamation laws heretofore or hereafter enacted, or under any act of Congress which shall permit of the performance by the United States of work in this state, for the purposes of construction of irrigation works, including drainage works, or for purchase, extension, operation or maintenance of constructed works, or for the assumption, as principal or guarantor, of indebtedness to the United States on account of district laws."

Section 165. Section 89-1215, R.C.M. 1947, is amended to read as follows:

"89-1215. **Records required to be kept — examination by state examiner.** It shall be the duty of the board of control to keep, or cause to be kept, a full and complete book and record of the accounts, records, contracts, securities, minutes of meetings and other matters of every kind pertaining to or belonging to the joint operation of the irrigation districts, in the form prescribed by the *department of intergovernmental relations*.

It is hereby made the duty of the *department of intergovernmental relations* to prescribe such forms for the use of the board of control, and to examine the same as provided by law for the examination of the affairs of county offices."

Section 166. Section 89-1905, R.C.M. 1947, is amended to read as follows:

"89-1905. **Conveyance of property of irrigation districts to department of natural resources and conservation.** *In addition to all other powers heretofore granted any irrigation district, existing under the laws of Montana, for the purpose of securing financial aid in any form from the department of natural resources and conservation, an irrigation district may convey, assign, transfer and set over to the department all or any part of its property, including all water rights, rights of way, and easements for reservoirs, reservoir sites, canals, ditches, laterals, and head gates, as may be required by the department as a condition to furnishing such financial aid or assistance.*"

Section 167. Section 89-2911, R.C.M. 1947, is amended to read as follows:

"89-2911. **Definitions.** Unless the context requires otherwise, in this chapter:

(a) "Ground water" means any fresh water beneath the land surface or beneath the bed of a stream, lake, reservoir or other body of surface water, and which is not a part of that surface water. Fresh water shall be deemed to be water fit for domestic, livestock or agricultural use. The *department*, after notice and hearing, may fix definite standards for determining fresh water in any controlled ground water area or subarea of the state.

(b) "Aquifer" means any underground geological structure or formation which is capable of yielding water or is capable of recharge.

(c) "Well" means any artificial opening or excavation in the ground, however made, by which ground water can be obtained or through which it flows under natural pressures or is artificially withdrawn.

(d) "Beneficial use" means a use of water for the benefit of the appropriator, other persons or the public, including, but not limited to, agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses.

(e) "Person" means an individual, association, partnership, corpora-

tion, state agency, political subdivision, and the United States or any agency thereof.

(f) "*Department*" means the department of natural resources and conservation provided for in Title 82A, chapter 15.

(g) "Ground water area" means an area which, as nearly as known facts permit, may be designated so as to inclose a single and distinct body of ground water, which shall be described horizontally by surface description in all cases and which may be limited vertically by describing known geological formations should conditions dictate this to be desirable. For purposes of administration, large ground water areas may be divided into convenient administrative units "known as subareas."

(h) "Board" means the board of natural resources and conservation provided for in section 82A-1509.

Section 168. Section 89-2914, R.C.M. 1947, is amended to read as follows:

**"89-2914. Designation or modification of controlled ground water areas — notice of hearings.** Designation or modification of an area of controlled ground water use may be proposed to the board by the *department* on its own motion or by petition signed by at least twenty (20) or one-fourth ( $\frac{1}{4}$ ) (whichever is the lesser number) of the users of ground water in a ground water area wherein there is alleged to be factual data showing: (1) that ground water withdrawals are in excess of recharge to the aquifer or aquifers within such ground water area; (2) that excessive ground water withdrawals are very likely to occur in the near future because of consistent and significant increases in withdrawals from within the ground water area; or (3) that significant disputes regarding priority of rights, amounts of ground water in use by appropriators, or priority of type of use are in progress within the ground water area.

When such a proposal is thus made, the *department* shall fix a time and place for a hearing, which time shall not be less than thirty (30) days from the making of the proposal. The *department*, or the petitioners (as the case may be) shall publish a notice of the hearing setting forth therein

- (1) the names of the petitioners;
- (2) the description by legal subdivisions of all lands included in the ground water area or subarea;
- (3) the purpose of the hearings and
- (4) the time and place of the hearing where any interested person may appear, either in person or by attorney, file written objections to the granting of the proposal and be fully heard. Such notice of hearing shall be published at least once in each week for three successive weeks before the date of the hearing in a newspaper of general circulation in the county or counties in which the said ground water area or subarea is located. The *department* or the petitioners (as the case may be) shall also cause a copy of the notice together with a copy of the petition to be served by mail, not less than twenty (20) days before the hearing on all persons, other than the petitioners, who have theretofore filed a declaration of a

claim or notice of appropriation to withdraw ground water from the particular ground water area or subarea involved in the proceedings. A copy of the notice together with a copy of the proposal shall be mailed to each person at his last known address and such service shall be complete upon depositing it in the post office, postage prepaid, addressed to each person on whom it is to be served. Publication and mailing of such notice, as prescribed herein, when completed shall be deemed to be sufficient notice of such hearing to all interested persons."

Section 169. Section 89-2915, R.C.M. 1947, is amended to read as follows:

**"89-2915. Limiting withdrawals — hearing and order.** (1) At the time set for the hearing the board, if it is satisfied that the notice of hearing has been duly published and mailed as required by section 89-2914, shall proceed to hear evidence and may consider information which the *department* has duly obtained under this act, and after the conclusion of the hearing shall make written findings and an order. If the board finds on the basis of the hearing and other information obtained by the *department* that the withdrawal of ground water in such area or subarea exceeds the safe annual yield of ground water as measured by the recharge of the area or subarea, it shall order the aggregate withdrawal of ground water from such area or subarea decreased so that it shall not exceed such annual yield. Except for domestic use, such decrease shall conform to the priority of the pertinent rights and shall prevail for the term of shortage in the available supply. The *department* may enforce the order; require persons to cease such excessive withdrawals in reverse order of their priority of rights; and bring an action for an injunction in a district court of a district in which all or part of the area affected is located, in addition to all other remedies.

(2) The order of the board shall be published and mailed by the *department* in the manner and for the length of time as prescribed by section 89-2914 for the publication and mailing of the notice of hearing except that a copy of the written findings of the board shall be mailed instead of a copy of the proposal, and except further, that a copy of the order together with a copy of the written findings shall be mailed to each petitioner at his last known address. Upon publication and mailing of such order, as prescribed herein, the order shall be final and conclusive unless an appeal therefrom is taken.

(3) Once a petition has been filed and an order has been made limiting the withdrawal of ground water from a particular ground water area or subarea, as provided in this section, the board *may* after notice and hearing as heretofore provided in this section, modify or revoke its order upon a showing by any interested party and a finding by the board that conditions have materially changed since the prior order. While a matter is pending before the board, the *department* may restrict further development of the subarea."

Section 170. Section 89-2916, R.C.M. 1947, is amended to read as follows:

**"89-2916. Administrative finding of priorities.** (1) Any person

claiming a right to withdraw ground water (whether or not from a controlled area) or the *department* at its discretion, may initiate a hearing by the *department* for the ascertainment of all existing rights to the use of the ground water in the ground area or subarea involved. The *department* shall produce at the hearing a map showing and describing all the lands included in the ground water area or subarea, and copies of all data upon which any prior designation or modification order was based. The waiving or assignment of rights by mutual agreement for either temporary or extended periods, shall not modify or cancel the relative priorities of the rights.

(2) Within any designated or modified controlled ground water area or subarea wherein oil and/or gas wells produce either fresh, brackish, or saline water associated with oil and gas, the volume of production of which is dependent entirely on the oil and/or gas withdrawals, such production of water shall be under the prior jurisdiction of the *board of oil and gas conservation*. Hearings pertaining to the production, use, or disposal of water from *those* wells shall be held by *that board* in accordance with the procedures established by that *board*. The *department* may petition the *board of oil and gas conservation* for hearings in regard to *those* operations and it shall be notified by the *board of oil and gas conservation* of *those* hearings instigated by other parties, when *those* hearings involve operations within a controlled ground water area or subarea.

(3) Hereafter, in a hearing for the ascertainment and finding of priorities, involving rights to the use of ground waters, all appropriators of ground water or of surface water in the particular controlled area, or subarea shall be included as parties and notified in the manner provided in section 89-2914."

Section 171. Section 89-2917, R.C.M. 1947, is amended to read as follows:

"89-2917. **Scope of administrative hearing.** (1) In a hearing for the ascertainment and finding of priorities to the use of ground water, the *department* in its finding and order shall confirm, modify, alter or amend any prior order designating and modifying the boundaries of the ground water area or subarea involved, as the evidence justifies, shall determine the priority of rights and the quantity of ground water to which each appropriator, who is a party to the proceedings, is entitled in the particular ground water area or subarea, and shall find and determine any other matter necessary to the ascertainment of priorities of such existing rights to ground water. It may also determine the level below which the ground water may not be drawn by appropriators. The *department* shall act in administering and enforcing the order, as provided in section 89-2915.

(2) A copy of the order shall be recorded in the office of the clerk and recorder of each county in which the particular ground water area or subarea is located. If the order is not appealed, the order of the *department* shall be final and conclusive when it is published and mailed as provided for orders issued under section 89-2915."

Section 172. Section 89-2918, R.C.M. 1947, is amended to read as follows:

"89-2918. **Permit required to appropriate in controlled area.** A person may appropriate ground water in a controlled area only by applying for and receiving a permit from the *department* in accordance with the Montana Water Use Act. The *department* may not grant a permit if the withdrawal would be beyond the capacity of the aquifer or aquifers in the ground water area to yield ground water within a reasonable or feasible pumping lift (in the case of pumping developments) or within a reasonable or feasible reduction of pressure (in the case of artesian developments)."

Section 173. Section 89-2926, R.C.M. 1947, is amended to read as follows:

"89-2926. **Waste and contamination of ground water prohibited — exception — duties of department.** No ground waters shall be wasted without beneficial use. The *department* shall require all wells producing waters which contaminate other waters to be plugged or capped. It shall also require all flowing wells to be so capped or equipped with valves that the flow of water can be stopped when the water is not being put to beneficial use. Likewise, both flowing and nonflowing wells shall be so constructed and maintained as to prevent the waste, contamination or pollution of ground waters through leaky casings, pipes, fittings, valves, or pumps either above or below the land surface, provided however, in the following cases the withdrawal or use of ground water shall not be construed as waste under this act:

(1) the withdrawal of reasonable quantities of ground water in connection with the construction, development, testing, or repair of a well or other means of withdrawal of ground waters;

(2) the inadvertent loss of ground water owing to breakage of a pump, valve, pipe, or fitting, if reasonable diligence is shown by the person in effecting the necessary repair;

(3) the disposal of ground water without further beneficial use that must be withdrawn for the sole purpose of improving or preserving the utility of land by draining the same, or that removed from a mine to permit mining operations or to preserve the mine in good condition;

(4) the disposal of ground water used in connection with production, for reduction, smelting and milling metallic ores and industrial minerals, or that displaced from an aquifer by the storage of other mineral resources.

The *department* at any time may hold a hearing on *its* own motion, or upon petition signed by a representative body of users of ground water in any area or subarea, to determine whether the water supply within such area or subarea is used in compliance with this act."

Section 174. Section 89-2927, R.C.M. 1947, is amended to read as follows:

"89-2927. **Inspection — entry on premises.** The *department*, the state bureau of mines and geology, or the *department of health and environmental sciences*, may enter on the property of any appropriator, where a well is situated, at any reasonable hour of the day, for the purpose of investigating any matters in connection with this act."



Section 175. Section 89-2928.1, R.C.M. 1947, is amended to read as follows:

"89-2928.1. **Weil logs.** Within sixty (60) days after any well is completed, the driller shall file with the *department* a well log report on a form provided by the *department* at its offices and at the offices of the county clerks and recorders. The *department* may return the report for refileing if it is incomplete or incorrect. The *department* shall provide a copy of the complete and correct well log to the Montana bureau of mines and geology."

Section 176. Section 89-2930, R.C.M. 1947, is amended to read as follows:

"89-2930. **Duty of county attorneys and attorney general.** The county attorneys and the attorney general of the state shall perform such legal services and bring such legal proceedings in carrying out the purpose of this act within their respective counties as the *department* shall request."

Section 177. Section 89-2931, R.C.M. 1947, is amended to read as follows:

"89-2931. **Rules.** The *board* may prescribe and the *department* shall enforce reasonable rules concerning and providing for inspection and entry for that purpose by the *department*; the circumstances under which the construction of weirs or other measuring devices may be required; and such other similar matters as are required by, and consistent with the administration of this act."

Section 178. Section 89-2932, R.C.M. 1947, is amended to read as follows:

"89-2932. **Ground water supervisors — duties.** The *department* may appoint one or more ground water supervisors for each designated controlled area, and may appoint one or more ground water supervisors at large. Within their respective jurisdictions and under the direction of the *department*, the ground water supervisors and supervisors at large shall supervise the withdrawal of ground water and the carrying out of orders issued by the *department*."

Section 179. Section 89-2933, R.C.M. 1947, is amended to read as follows:

"89-2933. **Investigations.** (1) *The department shall* compile information for the purpose of enabling *it* to comply with this act. In compiling *this* information, the *department shall* make use of investigations, technical personnel, surveys, and information available from the Montana bureau of mines and geology, the United States geological survey, the *board of oil and gas conservation*, the *department of health and environmental sciences*, and any other private, state, or governmental agency.

(2) In addition to the foregoing, the *department* may request specific investigations by the preceding public agencies where desired information is not otherwise available."

Section 180. Section 89-2934, R.C.M. 1947, is amended to read as follows:

"89-2934. **Power to administer oaths and subpoena witnesses.** The *department* may administer oaths and issue subpoenas for the attendance of witnesses, in any investigation, hearing or proceeding held by it."

Section 181. Section 89-2934.1, R.C.M. 1947, is amended to read as follows:

"89-2934.1. **Hearings before board — Administrative Procedure Act.** (1) A person who is aggrieved by a final decision of the *department* under this chapter, is entitled to a hearing before the board.

(2) The Montana Administrative Procedure Act [82-4201 to 82-4225] governs administrative proceedings under this chapter."

Section 182. Section 89-2936, R.C.M. 1947, is amended to read as follows:

"89-2936. **Penalties.** Any person who violates or refuses or neglects to comply with any provision of this act, or of any order, rule or regulation promulgated by the *department* or *the board*, or who commits waste, shall be guilty of a misdemeanor, and upon conviction shall be fined not less than twenty-five dollars (\$25) nor more than two hundred and fifty dollars (\$250) for each offense."

Section 183. Section 89-3403, R.C.M. 1947, is amended to read as follows:

"89-3403. **Definitions.** As used in this act unless the context clearly indicates otherwise:

(1) "District" means a conservancy district, which is a public corporation and a political subdivision of the state.

(2) "Directors" means the board of directors of a conservancy district.

(3) "Elector" means a person qualified to vote under section 89-3423.

(4) "Court" means the district court of the judicial district in which the largest portion of the taxable valuation of real property of the proposed district is located and within the county in which the largest portion of the taxable valuation of real property of the proposed district is located within the judicial district.

(5) "Person" means a natural person; firm; partnership; co-operative; association; public or private corporation, including the state of Montana or the United States; foundation; state agency or institution; county; municipality; district or other political subdivision of the state; federal agency or bureau; or any other legal entity.

(6) "*Department*" means *the department of natural resources and conservation provided for in Title 82A, chapter 15.*

(7) "Board of supervisors" means the board of supervisors of the soil and water conservation district in which the largest portion of the taxable valuation of real property of the proposed district is located.

(8) "Works" means all property, rights, easements, franchises, and other facilities including, but not limited to, land, reservoirs, dams, canals, dikes, ditches, pumping units, mains, pipelines, waterworks systems, recreational facilities, facilities for fish and wildlife, and facilities to control and correct pollution.

(9) "Cost of works" means the cost of construction, acquisition, improvement, extension and *development* of works, *including* financing charges, interest and professional services.

(10) "Applicants" means any person residing within the boundaries of the proposed district making a request for a study of the feasibility of forming a conservancy district.

(11) "Notice" means publication at least once each week for three (3) consecutive weeks in a newspaper published in each county, or if no newspaper is published in a county, a newspaper of general circulation in the county, or counties, in which a district is or will be located. The last published notice shall appear not less than five (5) days prior to any hearing or election held under this act.

(12) "Owners" are the person or persons who appear as owners of record of the legal title to real property according to the county records whether such title is held beneficially or in a fiduciary capacity, except that a person holding a title for purposes of security is not an owner nor shall he affect the previous title for purposes of this act.

(13) "Taxable valuation" shall mean the valuation determined according to section 84-302, R.C.M., 1947, and does not mean assessed valuation."

Section 184. Section 89-3405, R.C.M. 1947, is amended to read as follows:

**"89-3405. Action by water board upon receipt of request.** (1) Sooner than eleven (11) days after the request is received, the *department* shall acknowledge the request.

(2) The *department* shall itself, or through *cooperating* agencies, or together with *cooperating* agencies:

(a) consult with the board of supervisors and all persons who may participate in the proposed project;

(b) conduct a preliminary survey of the proposed district;

(c) estimate costs of works, maintenance, and operation;

(d) determine sources of financing;

(e) reach a tentative decision on the feasibility, desirability and compatibility with the state water plan of the proposed district;

(f) adjust the boundaries of the proposed district to improve the feasibility, desirability or consistency with the state water plan;

(g) sooner than one (1) year after receipt of the request, send a report of the preliminary survey to the applicants, the board of supervisors, fish

and game commission, *department of health and environmental sciences*, and other affected state and federal resource agencies for their comments."

Section 185. Section 89-3406, R.C.M. 1947, is amended to read as follows:

"89-3406. **Hearing by department.** (1) Upon receipt of the preliminary survey report the applicants, or any one of them, may request the *department* to hold a hearing. The *department* shall hold the hearing sooner than sixty-one (61) days after receipt of the request. Notice of the hearing shall be given in accordance with *section 89-3403 (11)*.

(2) If the *department* itself initiated the preliminary survey, it may hold a hearing without being requested to do so."

Section 186. Section 89-3407, R.C.M. 1947, is amended to read as follows:

"89-3407. **Feasibility study and report — adjustment of proposed boundaries.** After the hearing, the applicants, or any one of them, may request the *department* to prepare a detailed feasibility study of the proposed district. If the *department* concludes that the proposed district is feasible, desirable, and consistent with the state water plan, it shall prepare a feasibility report, and sooner than one (1) year after receipt of the request, send copies to the applicants, if any, the fish and game commission, *department of health and environmental sciences*, and other affected state and federal water resource agencies. For good cause shown based upon the actual technical problems in completing the report, the *department* may use necessary additional time to complete and distribute the report. The detailed feasibility report shall describe the proposed works and contain an estimate of the cost of the works, the means of financing, and the estimated costs of operation and maintenance. The *department* may adjust the boundaries of the proposed district to improve the feasibility, desirability and consistency with the state water plan, and to exclude land which would receive no direct or indirect benefits from the proposed district."

Section 187. Section 89-3408, R.C.M. 1947, is amended to read as follows:

"89-3408. **Procedure for organization of district.** If in the opinion of the *department* the feasibility study shows that a district is feasible and consistent with the state water plan, the procedure for organization is:

(1) the *department* shall file a petition requesting organization with the court;

(2) the petition shall:

(a) state the name of the proposed district;

(b) give a legal description of the boundaries of the proposed district, excluding therefrom lands which would receive no direct or indirect benefits from the proposed district;

(c) describe the purposes of the district;

(d) describe the works;

(e) indicate the estimated cost of works, means of financing, and estimated costs of operation and maintenance;

(f) list the taxable valuation of real property in the proposed district, which must be one hundred thousand dollars (\$100,000) or more;

(g) describe the means of repaying capital costs;

(h) propose the persons who should be represented and the number of directors.

(3) The petition shall be signed by owners of at least fifty-one percent (51%) of the land outside the limits of an incorporated municipality, and not fewer than five per cent (5%) or one hundred (100), whichever is the lesser, of the persons who would qualify as electors within an incorporated municipality."

Section 188. Section 89-3410, R.C.M. 1947, is amended to read as follows:

"89-3410. **Filing of documents after organization.** Sooner than thirty-one (31) days after the district has been decreed organized, the clerk of the court shall transmit to the secretary of state, *the department*, and to the county clerk and recorder in each of the counties having lands in the district, copies of the election results, the decree of the court incorporating the district, and a description of the boundaries of the district. Copies of the same documents shall be filed in the office of the secretary of state in the same manner as articles of incorporation are required to be filed under the laws governing corporations. Copies shall also be filed in the office of the county clerk and recorder of each county in which a part of the district may be. The clerk and recorder of each county where the articles are filed and the secretary of state shall collect filing fees as provided by law."

Section 189. Section 89-3415, R.C.M. 1947, is amended to read as follows:

"89-3415. **Participation in federal programs.** A district organized under this act, by itself or in conjunction with others, as a sponsoring organization *may* participate in all federal programs including, but not limited to, the Watershed Protection and Flood Prevention Act of 1954 (68 Stat. 666), the federal Water Project Recreation Act of 1965 (79 Stat. 213), the federal Reclamation Act of 1902 (32 Stat. 388), and amendments to those acts."

Section 190. Section 89-3421, R.C.M. 1947, is amended to read as follows:

"89-3421. **Annual written report of directors' activities.** Before August 1 of each year, the directors shall send a written report of their activities during the previous fiscal year to the court and to the *department*. Reports shall be in the form, and contain the information, prescribed by the *department*."

Section 191. Section 89-3422, R.C.M. 1947, is amended to read as follows:

**"89-3422. State examiner to examine financial records — report — fee.** At least once each year the *department of intergovernmental relations* shall examine the financial records of each district and file a report of the examination with the *department of natural resources and conservation* and court. The *department of intergovernmental relations* shall collect a fee for the examination equal to that charged irrigation districts."

Section 192. Section 89-3438, R.C.M. 1947, is amended to read as follows:

**"89-3438. Petition for merger of districts — hearing and notice — merger into new district — inclusion in another district — majority of electors may kill merger by petition — existing obligations.**

(1) In case two (2) or more districts have been organized in a territory which, in the opinion of the directors of each of the districts, should constitute but one (1) district, the directors of the districts may petition the court for an order merging the districts into a single district. The petition shall be filed in the office of the clerk of the district court in and for that county which has the largest portion of taxable valuation of property within the districts sought to be included, as shown by the tax rolls of the respective counties. The petition shall set forth facts showing that the purposes of this act would be served by the merging of the districts, and that the merger would promote the economical execution of the purposes for which the districts were organized. A copy of the petition shall be filed with the *department*.

(2) Upon the filing of the petition, the court shall by order fix a time and place of hearing; and the clerk shall give notice as specified in section 89-3403 as well as by mail to the directors of the districts which would be merged. The notice shall contain the purpose, time, and the place of the hearing.

(3) Upon the hearing, should the court find that the averments of the petition are true and that the districts, or any of them, could feasibly and profitably be merged, it shall order that the merger take place and the districts shall be merged into one (1) district and proceed as such. The court shall designate the corporate name of the district, and further proceedings shall be taken as provided for in this act. The court shall by order appoint the directors of the district, who shall thereafter have powers and be subject to rules as are provided for directors in districts created in the first instance.

(4) Instead of organizing a new district from the constituent districts, the court may, in its discretion, direct that one (1) or more of the districts described in the petition be included in another of the districts, which other shall continue under its original corporate name and organization; or the court may direct that the district or districts so absorbed shall be represented on the directors of the original districts, designating what members of the directors of the original district shall be retired from the new board, and what members representing the included district or districts shall take their places.

(5) If the court receives a petition opposing the merger, signed by a majority of the electors of any of the concerned districts, the court shall not grant the order and shall dismiss the petition.

(6) Upon merger or inclusion, existing obligations shall remain exclusively with those who bore them prior to the merger or inclusion, except with the written consent, given prior to the merger or inclusion, of those who did not bear the obligations."

Section 193. Section 89-3449, R.C.M. 1947, is amended to read as follows:

"89-3449. **Other agencies not affected.** The provisions of this act shall not be construed to, in any manner, abrogate or limit the rights, powers, duties and functions of the *department*, conservation *commission*, conservation districts, *department* of health and *environmental sciences*, or the fish and game commission; but shall be held to be supplementary thereto and in aid thereof."

Section 194. Section 89-3502, R.C.M. 1947, is amended to read as follows:

"89-3502. **Policy and purposes.** (1) The policy and purposes of this act are to guide development of the floodway areas of this state consistent with the enumerated findings; to recognize the right and need of watercourses to periodically carry more than the normal flow of water; to provide state *coordination* and technical assistance to local units in management of floodway areas; to *coordinate* federal, state and local management activities for floodway areas; to encourage local governmental units to manage flood-prone lands including the adoption, enforcement and administration of land-use regulations; and to provide the *department of natural resources and conservation* with authority necessary to carry out a comprehensive floodway management program for the state.

(2) Specifically, it is the purpose of this act to:

(a) restrict or prohibit uses which are dangerous to health, safety of property in times of flood or cause increased flood heights or velocities;

(b) require that uses vulnerable to floods, including public facilities which serve such uses, be provided with flood protection at the time of initial construction;

(c) develop and provide information to identify lands which are unsuited for certain development purposes because of flood hazard."

Section 195. Section 89-3503, R.C.M. 1947, is amended to read as follows:

"89-3503. **Definitions.** As used in this *chapter*, unless the context otherwise requires:

(1) "A flood of one hundred year (100) frequency" means a flood magnitude expected to recur on the average of once every one hundred (100) years, or a flood magnitude which has a one per cent (1%) chance of occurring in any given year;

(2) "Artificial obstruction" means any obstruction which is not a natural obstruction;

(3) "Channel" means the geographical area within either the natural or artificial banks of a watercourse or drainway;

(4) "Board" means the board of natural resources and conservation provided for in section 82A-1509;

(5) "Department" means the department of natural resources and conservation provided for in Title 82A, chapter 15;

(6) "Designated floodway" means a floodway whose limits have been designated and established by order of the board;

(7) "Drainway" means any depression two (2) feet or more below the surrounding land serving to give direction to a current of water less than nine (9) months of the year, having a bed and well-defined banks; provided, that in the event of doubt as to whether a depression is a watercourse or drainway, it shall be presumed to be a watercourse;

(8) "Flood" means the water of any watercourse or drainway which is above the bank or outside the channel and banks of such watercourse or drainway;

(9) "Floodway" means the channel of a watercourse or drainway and those portions of the floodplain adjoining the channel which are reasonably required to carry and discharge the flood water of any watercourse or drainway;

(10) "Floodway-encroachment lines" mean the lines limiting a designated floodway;

(11) "Floodplain" means the area adjoining the watercourse or drainway which has been or may hereafter be covered by flood water;

(12) "Establish" means construct, place, insert, or excavate;

(13) "Natural obstruction" means any rock, tree, gravel, or analogous natural matter that is an obstruction and has been located within the floodway by a nonhuman cause;

(14) "Obstruction" means any dam, wall, riprap, embankment, levee, dike, pile, abutment, projection, revetment, excavation, channel rectification, bridge, conduit, culvert, building, refuse, automobile body, fill, or other analogous structure or matter in, along, across, or projecting into any floodway which may impede, retard or change the direction of the flow of water, either in itself or by catching or collecting debris carried by the water, or that is placed where the natural flow of the water would carry the same downstream to the damage or detriment of either life or property;

(15) "Owner" means any person who has dominion over, control of, or title to an obstruction;

(16) "Political subdivision" means any incorporated city or town or any county organized and having authority to adopt and enforce land-use regulations; and

(17) "Watercourse" means any depression two (2) feet or more below the surrounding land serving to give direction to a current of water at least nine (9) months of the year, having a bed and well-defined banks; provided, that it shall, upon order of the board, also include any particular



depression which would not otherwise be within the definition of water-course."

Section 196. Section 89-3504, R.C.M. 1947, is amended to read as follows:

**"89-3504. Program for delineation of floodways — floodway-encroachment lines — land-use regulations.** (1) The *department* shall initiate a comprehensive program for the delineation of designated floodways for every watercourse and drainway in the state. It shall make a study relating to the acquiring of flood data, and *may* enter into arrangements with the United States geological survey, the United States army corps of engineers or any other state or federal agency for such acquisition.

(2) When sufficient data have been acquired *by the department* to reasonably locate the floodway of a flood of one hundred (100) years frequency, the board shall establish, by order, after a public hearing, floodway-encroachment lines for *the* floodway within which a political subdivision may establish land-use regulation. The *department* shall furnish *this* data to officials of the political subdivision having jurisdiction over *those* areas together with a map outlining the areas involved, a copy of this act, adopted rules of the board, and suggested minimum standards *adopted by the board*. These standards *and* rules shall reflect gradations in flood hazard based on flood frequency and other criteria as outlined in *section 89-3507(2)*. The location of the encroachment lines shall be the estimated outer boundary of the floodway of one hundred (100) year frequency flood, as determined from the available data. The *department* shall record all floodway-encroachment lines established by *the board* in the office of the county clerk and recorder of each county in which *those* lines are found. The board *may* alter *the* lines at any later time, by order, after a public hearing if a re-evaluation of the then available flood data warrants it. Notice of *a* hearing or order of the board establishing or altering *the* line shall be given by publishing *the* notice once each week for three (3) consecutive weeks in a legal newspaper published or of general circulation in the area involved, the last publication of which shall be not less than ten (10) days prior to the date set for the hearing or the effective date of *the* order.

(3) If within one (1) year from the date of transmittal of the floodplain information to officials of the political subdivisions, any political subdivision has failed to adopt land-use regulations which meet or exceed the minimum standards of the board, the designated floodway shall be enforced and no artificial obstruction or nonconforming use shall be established by any person within the floodway-encroachment lines for such a one hundred (100) year flood as established by the board under subsection (2) of this section, unless specifically authorized by the board."

Section 197. Section 89-3505, R.C.M. 1947, is amended to read as follows:

**"89-3505. Artificial obstructions and nonconforming uses as nuisances.** An artificial obstruction or nonconforming use in a designated floodway enforced under section 89-3504(3) and not exempt under section

89-3506 is a public nuisance unless a permit has been obtained for such artificial obstruction or nonconforming use from the board."

Section 198. Section 89-3506, R.C.M. 1947, is amended to read as follows:

"89-3506. **Establishment of artificial obstructions or nonconforming uses unlawful — permitted open space uses — prohibited nonconforming uses.** (1) It is unlawful for a person to establish *an* artificial obstruction or nonconforming use within a designated floodway, or for *an* owner to permit *an* artificial obstruction to remain within a designated floodway without a permit from the board. This act *does* not affect any existing artificial obstruction or nonconforming use established in the floodway *before the land-use regulations adopted by the political subdivision are effective* or before the board has enforced a designated floodway under section 89-3504(3); *however, a person may not make nor may an owner allow alterations of an artificial obstruction within a designated floodway whether the obstruction proposed for alteration was located in the floodway before or after the effective date of this act except upon express written approval of the board. Maintenance of an obstruction is not an alteration.*

(2) The following open space uses shall be permitted within the designated floodway, to the extent that they are not prohibited by any other ordinance or statute, and provided they do not require structures other than portable structures, fill, or permanent storage of materials or equipment: (a) agricultural uses; (b) industrial-commercial uses such as loading areas, parking areas, emergency landing strips; (c) private and public recreational uses such as golf courses, tennis courts, driving ranges, archery ranges, picnic grounds, boat launching ramps, swimming areas, parks, wildlife management and natural areas, game farms, fish hatcheries, shooting preserves, target ranges, trap and skeet ranges, hunting and fishing areas, hiking and horseback riding trails; (d) forestry, including processing of forest products with portable equipment; (e) residential uses such as lawns, gardens, parking areas and play areas; (f) excavations subject to the issuance of a permit under section 89-3507.

(3) The following nonconforming uses shall be prohibited within the designated floodway: (a) A building for living purposes or place of assembly or permanent use by human beings; (b) a structure or excavation that will cause water to be diverted from the established floodway, cause erosion, obstruct the natural flow of water, or reduce the carrying capacity of the floodway; (c) the construction or permanent storage of *an* object subject to flotation or movement during flood level periods."

Section 199. Section 89-3507, R.C.M. 1947, is amended to read as follows:

"89-3507. **Permits for obstructions — application — factors considered — fees.** (1) The board *may* issue permits for the establishment or alteration of obstructions which would otherwise violate section 89-3506. The application for the permit shall *be submitted to the department* and contain such information as the *department requires*, including complete maps, plans, profiles and specifications of the obstruction and watercourse or drainway.

(2) In passing upon *the* application, the board shall consider: (a) the danger to life and property by water which may be backed up or diverted by *the* obstruction; (b) the danger that the obstruction will be swept downstream to the injury of others; (c) the availability of alternate locations; (d) the construction or alteration of the obstruction in such a manner as to lessen the danger; (e) the permanence of the obstruction; (f) the anticipated development in the foreseeable future of the area which may be affected by the obstruction; and, (g) such other factors as are in harmony with the purpose of this act. The board may make a part of *the* permit any reasonable conditions it may *consider* advisable. In order for the permit to continue to remain in force, the obstruction must be maintained so as to comply with the conditions and specifications of the permit.

(3) Permits for obstructions to be established in the floodway of watercourses must be specifically approved or denied within a reasonable time by the board; permits for obstructions in the floodways or drainways shall be conclusively deemed to have been granted sixty (60) days after the receipt of *the* application by the *department*, or after such time as the board by rule *specifies*, unless the board notifies the applicant that the permit is denied.

(4) *An* application for a permit shall be accompanied by a nonrefundable application fee of ten dollars (\$10) which the state treasurer shall credit to the floodway obstruction removal fund."

Section 200. Section 89-3508, R.C.M. 1947, is amended to read as follows:

"89-3508. **Powers and duties of department relative to obstructions.** (1) Where an obstruction to a floodway established under section 89-3504(2) has been created by fallen trees, silt, debris, wreckage, unanchored automobile bodies, and like matter, the *department* may, in its discretion, remove the obstruction, in which case the cost of removal shall be borne by the *department*; and

(2) Where, after investigation, notice, and hearing, an order has been issued *by the board* to the owner of an obstruction not exempt under section 89-3506 for its removal or repair, and the order is not complied with within such reasonable time as may be prescribed, or if the owner cannot be found or determined, the *department* may make or cause *the* removal or repairs to be made, the cost of which shall be borne by the owner and shall be recoverable in the same manner as debts are now recoverable by law."

Section 201. Section 89-3509, R.C.M. 1947, is amended to read as follows:

"89-3509. **Authority to enter and investigate lands or waters.** The *department* may make reasonable entry upon lands and waters in the state for the purpose of making *an* investigation, survey, removal, or repair contemplated by this act. An investigation of *a* natural or artificial obstruction shall be made by the *department* either on its own initiative, on the written request of three (3) titleholders of land abutting the watercourse or drainway involved, or on the written request of *a* political subdivision."

Section 202. Section 89-3511, R.C.M. 1947, is amended to read as follows:

"89-3511. **Orders and rules — judicial remedy.** The board may *adopt* such orders and rules as are necessary to implement this act. If an order is issued to the owner of an artificial obstruction not exempt under *section 89-3506* for its removal or repair, *the* order shall not become effective less than *ten* (10) days after a hearing is held relating to *the* order. In addition to any requirement imposed by *section 89-3504 (2)*, where *an* order is issued which affects with particularity the land adjacent to a watercourse or drainway, notice of the contents of *the* order and of any required hearing shall be mailed by the *department* to the titleholder of *the* land not less than ten (10) days before the effective date of *the* order, or, if there is a required hearing, to the titleholder of *the* land and to the owner of the obstruction not less than ten (10) days before the date of *the* hearing; *however, the* notice need not be given to the owner of the obstruction for an order issued pursuant to *section 89-3508 (2)* if the owner cannot be found or determined. All orders and rules *adopted* by the board shall be on file at the offices of the *department* and in the office of the county clerk of each county affected by *the* order or rule. A person aggrieved by any order of the board issued under this act may appeal from *the* order to a court of competent jurisdiction within thirty (30) days after its effective date. *If* an appeal is taken, enforcement of *the* order shall be stayed pending the outcome of *the* appeal. Service of notice of the appeal shall be made upon the *department*."

Section 203. Section 89-3512, R.C.M. 1947, is amended to read as follows:

"89-3512. **Floodway obstruction removal fund.** The state treasurer *shall* establish the floodway obstruction removal fund and credit to *the* fund for the removal of obstructions as provided in *section 89-3508 (1)*, such money specifically appropriated by the legislature. The *department* may allocate money from the floodway obstruction removal fund for purposes provided in *section 89-3508 (1)*."

Section 204. Section 89-3514, R.C.M. 1947, is amended to read as follows:

"89-3514. **Permit construed as added requirement — exception — immunity.** (1) The granting of a permit under this act *does not* affect any other type of approval required by any other statute or ordinance of the state, of any political subdivision or of the United States, but *is* an added requirement; *however, if* a political subdivision enacts and enforces land-use regulations which meet or exceed the minimum standards of the board, the board's *minimum standards* are advisory only. The grant or denial of a permit *does not* have *an* effect on *a* remedy of *a* person at law or in equity; *however, where* it is shown that there is a wrongful failure to comply with this act, there *is* a rebuttable presumption that the obstruction was the proximate cause of the flooding of the land of *a* person bringing suit.

(2) A permit for the construction of *a* structure to be established within a designated floodway *may not* be granted by *a* political subdivi-

sion unless the applicant has first obtained the permit required by this act, or until the board acknowledges that *the* structure would not be an obstruction within the meaning of this act.

(3) *An action for damages sustained because of injury caused by an obstruction for which a permit has been granted under this act may not be brought against the state, the board, a member of the board, or the department. This act does not interfere with the right of the United States to regulate interstate commerce or the navigable waters of the United States.*"

Section 205. Section 89-3515, R.C.M. 1947, is amended to read as follows:

"89-3515. **Remedies not exclusive.** The use of any one of the remedies or powers given to the board *or the department* in this act is not a bar to the exercise of any other remedy or power given by this act."

Section 206. Section 93-9908, R.C.M. 1947, is amended to read as follows:

"93-9908. **The complaint and its contents.** The complaint must contain:

1. The name of the corporation, association, commission, or person in charge of the public use for which the property is sought, who must be styled plaintiff.
2. The names of all owners, mortgagees and lien holders of record and any other claimants of the property of record, if known, or a statement that they are unknown, who must be styled defendants.
3. A statement of the right of plaintiff.
4. If a right of way is sought, the complaint must show the location, general route, and termini, and must be accompanied with a map thereof, so far as the same is involved in the action or proceeding.
5. A description of each piece of land sought to be taken, and whether the same includes the whole or only a part of the entire parcel or tract. All parcels lying in the county, and required for the same public use, may be included in the same or separate proceedings, at the option of the plaintiff, but the court may consolidate or separate them to suit the convenience of the parties. When application for the condemnation of a right of way for the purposes of sewerage is made on behalf of a settlement, or town, or a county, the county commissioners of the county may be named as plaintiff.
6. If a sand, stratum or formation suitable for use as an underground natural gas storage reservoir is sought to be appropriated, a description thereof and of the land in which it is alleged to be contained, and a description of all other property and rights sought to be appropriated for use in connection with the appropriation of the right to store natural gas in and withdraw natural gas from such reservoir. In addition, the complaint shall state facts showing that the underground reservoir is one subject to appropriation by plaintiff; also stating that the underground

storage of natural gas in the land sought to be appropriated is in the public interest; that the underground reservoir is suitable and practicable for natural gas storage; that the plaintiff in good faith has been unable to acquire the rights sought to be appropriated hereunder and a statement that the rights and property sought to be appropriated are not prohibited by law; and in addition, the complaint must be accompanied by a certificate from the *board of oil and gas conservation* as set forth in section 60-804."

Section 207. Section 93-9911, R.C.M. 1947, is amended to read as follows:

"93-9911. **Power of court — preliminary condemnation order.** The court or judge has power:

1. To regulate and determine the place and manner of making the connections and crossings, and enjoying the common uses mentioned in subdivision 5, section 93-9904, and of the occupying of canyons, passes, and defiles for railroad purposes, as permitted and regulated by the laws of this state or of the United States;

2. To determine whether or not the use for which the property is sought to be appropriated is a public use, within the meaning of the laws of this state;

3. To limit the amount of property sought to be appropriated, if in the opinion of the court or judge the quantity sought to be appropriated is not necessary;

4. If the court or judge is satisfied, from the evidence presented at the hearing provided for in section 93-9909, that the public interests require the taking of such lands, and that the facts necessary to be found before condemnation appear, it or he must forthwith make and enter a preliminary condemnation order that the condemnation of the land or other real property may proceed in accordance with the provisions of this chapter.

5. If the property sought to be appropriated is a sand, stratum or formation suitable for use as an underground natural gas storage reservoir and the existence and suitability of it for such use has been proved by plaintiff upon substantial evidence, the order of the court or judge shall direct the commissioners to ascertain and determine the amount to be paid by the plaintiff to each person for his interest in the property sought to be appropriated for use as such underground natural gas storage reservoir, and/or as the annual rental for the use of such underground gas storage reservoir and for the use of so much of the surface as is required in the operation of the said underground gas storage reservoir, and for the use in connection with the creation, operation and maintenance thereof, and for all the native gas contained in said reservoir as compensation and damages by reason of the appropriation of such property; provided, however, the amount to be paid for such native gas and all thereof shall be no less than the market value of such gas.

The court shall appoint three (3) persons, qualified as experts and recommended as such by the *board of oil and gas conservation*, to assist

and advise the commissioners in determining the compensation and damages to be paid by plaintiff to each person for his interest in the property sought to be appropriated and the fees and expenses of such persons shall be chargeable as costs of the proceedings to be paid by the plaintiff."

Section 208. Sections 28-101, 28-102, 28-107, 28-126, 28-132, 28-409, 46-2303 through 46-2306, 46-2319, 46-2328, 60-125, 60-137, 60-138, 60-146, 60-147, 81-1401.1, 81-1401.2, 81-1403, 81-1505, 82-3001 through 82-3003, 82A-1502 through 82A-1506, 82A-1507.1, 82A-1510, 82A-1511, 82A-1512, 89-103, 89-103.1, 89-103.3, 89-103.4, 89-103.5, 89-103.6, 89-103.8, 89-107, 89-108, 89-126, 89-129 through 89-139, 89-311, 89-827, and 89-828 are repealed.

Approved March 21, 1974

## CHAPTER NO. 254

AN ACT TO ACKNOWLEDGE THE EXISTENCE OF NATURAL AND POTENTIALLY NATURAL AREAS IN THE STATE AND TO PROVIDE FOR THE PROTECTION OF THESE AREAS.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is a new section to be numbered 81-2701, R.C.M. 1947, which reads as follows:

81-2701. **Title.** This act shall be known and may be cited as the "Montana Natural Areas Act of 1974."

Section 2. There is a new section to be numbered 81-2702, R.C.M. 1947, which reads as follows:

81-2702. **Legislative intent.** The legislative assembly finds that in the expanses of Montana there are natural areas possessing significant scenic, educational, scientific, biological, and/or geological values, or areas possessing these characteristics to a degree promising their restoration to a natural state; that since the development of these areas is an irreversible commitment of a finite and diminishing resource of fundamental importance, the remaining areas should be preserved for the benefit of this and future generations; and that currently there are no regulations promulgated by the state or local governments to insure adequate protection for natural areas. It is the intention of the legislative assembly to establish a system for the protection of natural or potentially natural areas in order to preserve their natural ecosystem integrity in perpetuity.

In this connection, the legislature recognizes the fact that the school trust lands are held in trust for the support of education and for the attainment of other worthy objects helpful to the well-being of the people of the state; that it is the duty of the board of land commissioners to administer this trust so as to secure the largest measure of legitimate and reasonable advantage to the state; and hereby declares the preser-

vation of natural areas, whether trust or other lands, for the enjoyment and inspiration of future generations, to be an object worthy of legislative action helpful to the well-being of the people of the state and also declares that the preservation of natural areas on state trust land has sufficient value to present and future education to meet the state's obligation for the disposition and utilization of trust lands as specified in the Enabling Act.

Section 3. There is a new section to be numbered 81-2703, R.C.M. 1947, which reads as follows:

81-2703. **Definitions.** (1) "Natural area" means an area of land which must generally appear to have been affected primarily by the forces of nature with the visual aspects of human intrusion not dominant, and also must have one or more of the following characteristics:

(a) An outstanding mixture or variety of vegetation, wildlife, water resource, landscape and scenic values.

(b) An important or rare ecological or geological feature or other rare or significant natural feature worthy of preservation for scientific, educational or ecological purposes.

(2) "Board" means the board of land commissioners.

(3) "Department" means the department of state lands.

(4) "Council" means the natural areas advisory council created by this act.

Section 4. There is a new section to be numbered 81-2704, R.C.M. 1947, which reads as follows:

81-2704. **Methods of bringing land under this act.** A natural area, as defined in section 3 [81-2703], may become subject to the provisions of this act in any of the following ways:

(1) Designation by the board on lands controlled by the board.

(2) Designation by the legislative assembly on lands owned by the state of Montana.

(3) Acquisition by the board by purchase with consent of the property owner of sufficient interests in private property to protect the natural area; provided however that transfer of surface property or development rights shall not alter the rights attending the subsurface estate if owned by another party.

(4) Gift accepted by the board.

(5) Trade of state owned trust land for a natural area on federal, county or private land, provided however that lands received in exchange for trust lands should be equal in value to the exchanged trust land and, as closely as possible, equal in area.

Section 5. There is a new section to be numbered 81-2705, R.C.M. 1947, which reads as follows:



**81-2705. Natural area identification procedures — other agencies to assist — annual report to legislature.** The department shall establish and utilize procedures to identify the existing or potentially natural areas on lands under its jurisdiction and shall collect information on potential natural areas on private, county, and other state land. The department of natural resources shall cooperate with the department by reporting potential natural areas on state timber lands. The department shall make recommendations to the board for designation of natural areas on state lands controlled by the board and for acquisition of interests in other lands for the preservation of natural areas. The board shall submit to each legislative assembly an annual report on its designation and acquisition activities.

Section 6. There is a new section to be numbered 81-2706, R.C.M. 1947, which reads as follows:

**81-2706. Legislature may designate.** The legislative assembly may designate natural areas on any state owned land.

Section 7. There is a new section to be numbered 81-2707, R.C.M. 1947, which reads as follows:

**81-2707. Board given acquisition powers.** Subject to the limits of available appropriations, the board is authorized to acquire interests to lands by any lawful means for the purpose of designating natural areas; provided that the board shall exercise the power of eminent domain only in specific instances where authorized by the legislative assembly.

Section 8. There is a new section to be numbered 81-2708, R.C.M. 1947, which reads as follows:

**81-2708. Designated areas not subject to condemnation or development — preexisting land uses permitted to continue.** (1) Natural areas acquired or designated in accordance with the provisions of this act are protected from condemnation or other development adversely affecting the integrity of the natural area until legislative action is taken specifically authorizing the condemnation or development.

(2) Land uses on the designated or acquired natural area in existence at the time of designation or acquisition by the board may continue under appropriate leases or agreements. All such land uses shall be controlled under regulations established by the board under section 9 [81-2709].

Section 9. There is a new section to be numbered 81-2709, R.C.M. 1947, which reads as follows:

**81-2709. Board to promulgate protective rules.** (1) The board shall, after at least one public hearing, promulgate comprehensive regulations for the protection of acquired and designated natural areas within its jurisdiction. Such regulations shall be consistent with the intent of this act and shall be promulgated and enforced so as to protect the qualities of the natural areas. Special attention shall be given to protecting areas from recreational overuse.

(2) The regulations shall provide at least two board meetings per year for the receipt of testimony on the board's proposed designation of natural areas. No area shall be designated by the board unless the opportunity for public testimony has been afforded at meetings provided for in the

regulations, and positive notification of all involved landowners and lessees has been made.

Section 10. There is a new section to be numbered 81-2710, R.C.M. 1947, which reads as follows:

**81-2710. Composition and duties of advisory council — governor may appoint.** (1) If the governor appoints a natural areas advisory council, the council shall consist of seven (7) citizens of the state, four (4) of whom shall possess experience in the evaluation and preservation of natural areas, and one (1) member each from agriculture, ranching and industry. The council shall make recommendations to the board for the administration of the natural areas system and additions thereto from state, federal, county or private land.

(2) Within ninety (90) days of the receipt of a council recommendation the board shall:

(a) In the case of state trust lands and existing designated areas promulgate a rule designating a recommended natural area contained in the recommendation and adopting the recommendation, or issue a written statement of its reasons for denying the recommendation.

(b) In the case of federal, private or county land direct the department to begin investigation and negotiation to acquire by purchase or trade interests in the land necessary to protect the natural area, or issue a written statement of its reasons for denying the recommendation.

Section 11. There is a new section to be numbered 81-2711, R.C.M. 1947, which reads as follows:

**81-2711. Consultation with interested parties — proceedings and files to be open.** The board and the natural areas advisory council shall consult with citizen organizations and other interested state agencies in the administration of this act. All files and proceedings under this act shall be open to the public.

Section 12. There is a new section to be numbered 81-2712, R.C.M. 1947, which reads as follows:

**81-2712. When more restrictive provisions to apply.** A designated natural area that is or shall become a part of a state park, wildlife refuge, or similar area shall be subject to the provisions of this act and the laws under which the other areas may be administered and in the case of conflict between the provisions of these laws the more restrictive provisions shall apply.

Section 13. There is a new section to be numbered 81-2713, R.C.M. 1947, which reads as follows:

**81-2713. Separability.** It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved March 21, 1974

## CHAPTER NO. 255

AN ACT DIRECTING THE DEPARTMENT OF HIGHWAYS TO CLAS-

SIFY OPEN RANGE AREAS ACCORDING TO THE DEGREE OF TRAFFIC HAZARD CREATED BY LIVESTOCK AND TO FENCE OUT LIVESTOCK IN THE MORE HAZARDOUS AREAS; AND AMENDING SECTIONS 32-2426, 32-2427 AND 32-2412, R.C.M. 1947.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is a new section to be numbered 32-2425.1, R.C.M. 1947, which reads as follows:

32-2425.1. **Declaration of purpose.** It is the purpose of this act to balance the tradition of the open range and the economic and geographic problems of raising livestock with the need for safer highways and the policy of taking all feasible measures to reduce the high incidence of traffic accidents and fatalities on Montana highways.

Section 2. Section 32-2426, R.C.M. 1947, is amended to read as follows:

"32-2426. **Commission to fence along state highways through open range where livestock a hazard — gates — "open range" defined.** (1) The highway commission shall fence the right of way of any part of the state highway system that is constructed and/or reconstructed, after the effective date of this act, through open range where livestock present a hazard to the safety of the motorist where a fence is constructed, adequate stock gates or stock passes, as necessary, shall be provided to make land on either side of the highway usable for livestock purposes.

(2) For the purposes of this act, as used in sections 2 through 6 [32-2426 through 32-2429, 32-2412]:

(a) "Open range" means those areas of the state where livestock is raised and maintained in sufficient numbers as to constitute a significant part of the local or county economy and where such animals graze and move about generally unrestrained by fences.

(b) A "high hazard area" is a segment of the primary highway system passing through open range where livestock moves on or across the highway often enough, in enough numbers, and with enough ease of access that such animals create a significant traffic safety hazard. Evidence bearing on whether animals on the highway pose a significant hazard includes, without limitation, past accident records, the opinions of persons qualified by experience to evaluate the relative safety of road conditions, and the terrain around the road.

(c) A "low hazard area" is a segment of the primary highway system passing through open range which is not a high hazard area.

(d) "Livestock" means cattle, sheep, swine, horses, mules, and goats."

Section 3. Section 32-2427, R.C.M. 1947, is amended to read as follows:

"32-2427. **Department to delineate open range hazard areas.** The

*department shall, by December 31, 1975, delineate the open range areas through which the primary highway system runs and classify, pursuant to section 4 [32-2428], such areas as high hazard areas or low hazard areas."*

Section 4. There is a new section to be numbered 32-2428, R.C.M. 1947, which reads as follows:

**32-2428. Procedure for classifying state highways in open range.** The department shall study the primary highways in each county containing open range and, applying the criteria set out in section 32-2426, shall propose a division of such areas into high hazard and low hazard areas. The department shall publish an illustrated summary of its proposed classification of a county, in a newspaper of general daily or weekly circulation in that county, and the same publication shall give notice of a public hearing in the county within four (4) weeks. The department shall conduct this hearing on its proposed classification, and the record of the hearing shall include a statement of the department's reasons for its proposal as well as the views of the citizens interested in the proposal. Within four (4) weeks after the hearing, the department shall publish its final decision on the classification in the same format and newspaper used for the publication of the notice. For the purpose of judicial review, this final decision is a rule which may be reviewed by a district court as provided in section 82-4219.

Section 5. There is a new section to be numbered 32-2429, R.C.M. 1947, which reads as follows:

**32-2429. Department to fence where it has duty.** The department shall erect a fence in every high hazard area as promptly as possible, and the cost of such construction is an expenditure for the enforcement of federal aid highway safety programs. Gates, stock underpasses, water facilities, and cattle-guards may be installed where necessary to make the land on either side of the highway usable for livestock purposes or where a public right-of-way intersects the state highway.

Section 6. Section 32-2412, R.C.M. 1947, is amended to read as follows:

**"32-2412. Seeding along highways.** (1) After a federal-aid or state highway is constructed, the commission shall seed borrow pits, slopes and shoulders to an adaptable perennial grass or combination of perennial grasses and legumes whenever establishment of perennial grass covers seem suitable. The seed shall be certified.

(2) The commission shall seek joint recommendations and specifications as to time and method of seeding, fertilizing practices and grass species from the Montana extension service, the experiment station, and the soil conservation service.

(3) *After a right of way in open range has been fenced pursuant to sections 32-2426 or 32-2427, the commission may seed the land within the fence to a grass which may be cropped for hay, and may lease such lands or sell the right to take such hay to qualified persons."*

Approved March 21, 1974

## CHAPTER NO. 256

AN ACT AMENDING SECTION 59-904, R.C.M. 1947, TO EXEMPT

CERTAIN EMPLOYEES FROM CERTAIN PROVISIONS OF TITLE 59, CHAPTER 9, R.C.M. 1947; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 59-904, R.C.M. 1947, is amended to read as follows:

**"59-904. Officers and employees excepted from provisions of act.** This act does not apply to the following positions in state government:

- (1) elected officials *and their chief deputy and executive secretary*;
- (2) officers *and employees* of the legislative branch;
- (3) judges *and employees* of the judicial branch;
- (4) members of boards and commissions appointed by the governor, appointed by the legislature or appointed by other elected state officials;
- (5) officers or members of the militia;
- (6) agency heads appointed by the governor;
- (7) *academic and professional administrative personnel with individual contracts* under the authority of the board of regents of higher education;
- (8) *personal staff of the elected officials enumerated in Article VI, section 1, of the constitution of Montana are exempt from sections 59-909, 59-910, and 59-911 of this act, and section 82A-1014."*

Section 2. This act is effective upon passage and approval.

Approved March 21, 1974

## CHAPTER NO. 257

AN ACT AMENDING SECTIONS 16-4505, 16-4506, 16-4507, 16-4508, AND 16-4520, R.C.M. 1947, TO EXTEND THE VOTING FRANCHISE TO ALL OWNERS, LESSEES AND RESIDENTS OF REAL PROPERTY WITHIN COUNTY WATER AND SEWER DISTRICTS; RELATING TO QUALIFICATIONS OF VOTERS; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 16-4505, R.C.M. 1947, is amended to read as follows:

**"16-4505. Proposition submitted — who may vote — certificate of secretary of state — district deemed incorporated — must hear testimony — suit commenced within one year — election.** Upon such

hearing of said petition, the board of commissioners shall determine whether or not said petition complies with the requirements of the provisions of this act, and for that purpose must hear all competent and relevant testimony offered in support of or in opposition thereto. Such determination shall be entered upon the minutes of said board of commissioners. A finding of the board of commissioners in favor of the genuineness and sufficiency of the petition and notice shall be final and conclusive against all persons except the state of Montana upon suit commenced by the attorney general. Any such suit must be commenced within one (1) year after the order of the board of commissioners declaring such district organized as herein provided, and not otherwise. Upon the final determination of the boundaries of the district the board of commissioners of each county in which said district lies shall give notice of an election to be held in said proposed district for the purpose of determining whether or not the same shall be incorporated, the date of which election shall be not more than sixty (60) days from the date of the final hearing of such petition. Such notice shall describe the boundaries so established and shall state the proposed name of the proposed incorporation (which name shall contain the words ".... county water and/or sewer district"), and this notice shall be published for ten (10) consecutive days in a daily newspaper or in two (2) issues of a weekly newspaper printed and published in every county in which said district lies. The first publication shall be made at least two (2) weeks before the time at which the election is to be held. At such election the proposition to be submitted shall be: "Shall the proposition to organize .... county water and/or sewer district under (naming the chapter containing this act) of the acts of the .... session of the Montana legislature and amendments thereto be adopted?" And the election thereupon shall be conducted, the vote canvassed and the result declared in the same manner as provided by law in respect to general elections, so far as they may be applicable, except as in this act otherwise provided. No person shall be entitled to vote at any election under the provisions of this act unless such person possesses all the qualifications required of voters under the general election laws of the state, and is *a resident of the proposed district or the owner or lessee of taxable real property located within the county in which he proposes to vote and situated within the boundaries of the proposed district; provided however a person who is the owner or lessee of such real property need not possess the qualifications required of a voter in subsection (1)(c) of section 23-2701, R.C.M. 1947; provided further that such voter shall be qualified if he is registered to vote in any state of the United States.* Within four (4) days after such election the vote shall be canvassed by the board of commissioners. *If at least forty percent (40%) of all eligible voters within the proposed district have voted and if a majority of the votes cast at such election in each municipal corporation or part thereof and in the unincorporated territory of each county included in such proposed district shall be in favor of organizing such county district, said board of each such county shall by an order entered on its minutes declare the territory enclosed within the proposed boundaries duly organized as a county water and/or sewer district under the name theretofore designated, and the county clerk of each such county shall immediately cause to be filed with the secretary of state and shall cause to be recorded in the office of the county recorder of the county or counties in which such district is situated, each, a certificate stating*

that such a proposition was adopted. Upon the receipt of such last-mentioned certificate the secretary of state shall, within ten (10) days, issue his certificate reciting that the district (naming it) has been duly incorporated according to the laws of the state of Montana. A copy of such certificate shall be transmitted to and filed with the county clerk of the county or counties in which such district is situated. From and after the date of such certificate, the district named therein shall be deemed incorporated, with all the rights, privileges and powers set forth in this act and necessarily incident thereto. In case less than a majority of the votes cast are in favor of said proposition the organization fails but without prejudice to renewing proceedings at any time in the future."

Section 2. Section 16-4506, R.C.M. 1947, is amended to read as follows:

"16-4506. **Election of directors — term of office.** At an election to be held within such district under the provisions of this act and the laws governing general elections not inconsistent herewith, the district thus organized shall proceed within ninety (90) days after its formation to the election of a board of directors consisting, if there are no municipalities within the boundaries of said district, of five (5) members. In all cases where the boundaries of such district include any municipality or municipalities, said board of directors, in addition to said five (5) directors to be elected as aforesaid, shall consist of one (1) additional director for each one of said municipalities within such district, each such additional director to be appointed by the mayor of the municipality for which said additional director is allowed; and if there be any unincorporated territory within said district, one additional director, to be appointed by the board of commissioners of each county containing such territory. Any director so elected or appointed shall be *an owner or lessee of real property within said district or a resident therein*. All directors, elected or appointed, shall hold office until the election and qualification or appointment and qualification of their successors. The term of office of directors elected under the provisions of this act shall be four (4) years from and after the date of their election; provided, that the directors first elected after the passage of this act shall hold office only until the election and qualification of their successors as hereinafter provided. The term of office of directors appointed by said mayor or mayors or by said board of commissioners shall be six (6) years from and after the date of appointment. Directors to be first appointed under the provisions of this act shall be appointed within ninety (90) days after the formation of the district. The election of directors of such district shall be in every fourth year after its organization, on the fourth Tuesday in March, and shall be known as the "general district election." All other elections which may be held by authority of this act, or of the general laws, shall be known as special district election."

Section 3. Section 16-4507, R.C.M. 1947, is amended to read as follows:

"16-4507. **Nomination of officers.** (1) The mode of nomination and election of all elective officers of such district to be voted for at any district election and the mode of appointment of a director or directors by said mayor or mayors or by said board of commissioners shall be as follows and not otherwise.

(2) The name of a candidate shall be printed upon the ballot when a petition of nomination shall have been filed in his behalf in the manner and form and under the conditions hereinafter set forth.

(3) The petition of nomination shall consist of not less than twenty-five (25) individual certificates, which shall read substantially as follows:

PETITION OF NOMINATION  
Individual Certificate

State of ....  
County of ....

Prec. No. ....

I, the undersigned, certify that I do hereby join in a petition for the nomination of ....., whose residence is at .... for the office of .... of the .... district to be voted for at the district election to be held in the .... district on the .... day of ....., 19..; and I further certify that I am a qualified elector and *an owner or lessee of real property* within said district, *or a resident therein*, and am not at this time a signer of any other petition nominating any other candidate for the above named office; or, in case there are several places to be filled in the above named office, that I have not signed more petitions than there are places to be filled in the above named office; that my residence is at No. .... street, ....., and that my occupation is .....

(Signed)....

State of Montana  
County of ....

....., being duly sworn, deposes and says that he is the person who signed the foregoing certificate and that the statements therein are true and correct.

(Signed)....

Subscribed and sworn to before me this .... day of .... 19...

.....  
Notary Public

The petition of nomination of which this certificate forms a part shall, if found insufficient, be returned to ....., at ....., Montana.

(4) Clerk to furnish forms. It shall be the duty of the county clerk to furnish upon application a reasonable number of forms of individual certificates of the above character. If the district lies in more than one county, the county clerk whose county contains the largest percentage of the territory of said district shall fulfill this function.

(5) Certificates. Each certificate must be a separate paper. All certificates must be of uniform size as determined by the county clerk. Each certificate must contain the name of one signer thereto and no more. Each certificate shall contain the name of one candidate and no more. Each signer must be a qualified elector *owning or leasing or residing upon real property* within said district, must not at the time of signing a certificate have his name signed to any other certificate for any other candidate for the same office, or, in case there are several places to be filled in the same office, signed to more certificates for candidates for that office than there are places to be filled in such office. In case an elector has signed



two or more conflicting certificates, all such certificates shall be rejected. Each signer must verify his certificate and make oath that the same is true, before a notary public. Each certificate shall further contain the name and address of the person to whom the petition is to be returned in case said petition is found insufficient.

(6) Presentation of petition. A petition of nomination, consisting of not less than twenty-five (25) individual certificates for any one candidate, may be presented to the county clerk not earlier than forty-five (45) days nor later than thirty (30) days before the election. The county clerk shall endorse thereon the date upon which the petition was presented to him. If the district lies in more than one county, such petition for nomination shall be presented to the county clerk whose county contains the largest percentage of the territory of said district and said county clerk shall fulfill all duties assigned to county clerks in elections under this act.

(7) Examination of petition. When a petition of nomination is presented for filing to the county clerk, he shall forthwith examine the same, and ascertain whether or not it conforms to the provisions of this section. If found not to conform thereto, he shall then and there in writing designate on said petition the defect or omission or reason why such petition cannot be filed, and shall return the petition to the person named as the person to whom the same may be returned in accordance with this section. The petition may then be amended and again presented to the clerk as in the first instance. The clerk shall forthwith proceed to examine the petition as hereinbefore provided. If necessary, the board of commissioners shall provide extra help to enable the clerk to perform satisfactorily and promptly the duties imposed by this section.

(8) Signer may withdraw name. Any signer to a petition of nomination and certificate may withdraw his name from the same by filing with the county clerk a verified revocation of his signature before the filing of his petition by the clerk, and not otherwise. He shall then be at liberty to sign a petition for another candidate for the same office.

(9) Candidate may withdraw. Any person whose name has been presented under this section as a candidate may, not later than twenty-five (25) days before the day of election, cause his name to be withdrawn from nomination by filing with the county clerk a request therefor in writing, and no name so withdrawn shall be printed upon the ballot. If, upon such withdrawal, the number of candidates remaining does not exceed the number to be elected, then other nominations may be made by filing petitions therefor not later than twenty-five (25) days prior to such election.

(10) Petition filed. If either the original or amended petition of nomination be found sufficiently signed as hereinbefore provided, the clerk shall file the same twenty-five (25) days before the date of the election. When a petition of nomination shall have been filed by the clerk it shall not be withdrawn or added to and no signatures shall be revoked thereafter.

(11) Petitions preserved. The county clerk shall preserve in his office for a period of two years, all petitions of nomination and all certificates belonging thereto, filed under this section.

(12) List of candidates. Immediately after such petitions are filed, the

county clerk shall enter the names of the candidates in a list, with the offices to be filled, and shall not later than twenty (20) days before the election certify such list as being the list of candidates nominated as required by the provisions of this act, and the board of commissioners of each county in which the district lies shall cause said certified list of names and the offices to be filled, to be published in the proclamation calling the election at least ten (10) successive days before the election in at least one (1) but not more than three (3) newspapers of general circulation published in each county in which such district is located. Such proclamation shall conform in all respects to the general state law governing the conduct of general elections now or hereafter in force, applicable thereto, except as otherwise herein provided.

(13) Ballots. Form. The county clerk shall cause the ballots to be printed and bound and numbered as provided by said general state law, except as otherwise required in this act. The ballots shall contain the list of names and the respective offices as published in the proclamation and shall be in substantially the following form:

GENERAL (OR SPECIAL) DISTRICT ELECTION

.... District,  
(Inserting date thereof.)

Instructions to Voters: To vote, stamp or write a cross (X) opposite the name of the candidate for whom you desire to vote. All marks otherwise made are forbidden. All distinguishing marks are forbidden and make the ballot void. If you wrongly mark, tear or deface this ballot, return it to the inspector of election, and obtain another.

(14) How printed. All ballots printed shall be precisely on the same size, quality, tint of paper, kind of type, and color of ink, so that without the number it would be impossible to distinguish one ballot from another; and the names of all candidates printed upon the ballot shall be in type of the same size and style. A column may be provided on the right-hand side for questions to be voted upon at district election, as provided for under this act. The names of the candidates for each office shall be arranged in alphabetical order, and nothing on the ballot shall be indicative of the source of the candidacy or of the support of any candidate.

(15) No candidate omitted. The name of no candidate who has been duly and regularly nominated, and who has not withdrawn his name as herein provided shall be omitted from the ballot.

(16) Office. The offices to be filled shall be arranged in the following order: "For director vote for (giving number)."

(17) Voting squares. Half-inch square shall be provided at the right of the name of each candidate wherein to mark the cross.

(18) Spaces below printed names. Half-inch spaces shall be left below the printed names of candidates for each office, equal in number to the number to be voted for, wherein the voter may write the name of any person or persons for whom he may wish to vote.

(19) Votes necessary to elect. In case there is but one person to be elected to an office, the candidate receiving a majority of the votes cast for all the candidates for that office, shall be declared elected; in case there are two or more persons to be elected to an office, as that of director,

then those candidates equal in number to the number to be elected, who receive the highest number of votes for such office shall be declared elected.

(20) Failure to qualify. If a person elected fails to qualify, the office shall be filled as if there were a vacancy in such office, as hereinafter provided.

(21) Mode of appointment by mayor. The mode of appointment of director or directors by a mayor, or by a board of commissioners, shall be by certificate of appointment signed by said mayor or mayors, or issued by said board of commissioners, and transmitted to the board of directors of said district.

(22) Informality not to invalidate. No informality in conducting district elections shall invalidate the same, if they have been conducted by directors to fill a vacancy, or appointed by a mayor or by this act."

Section 4. Section 16-4508, R.C.M. 1947, is amended to read as follows:

"16-4508. **General law to govern.** The provisions of the law relating to the qualifications of electors, the manner of voting, the duties of election officers, the canvassing of returns, and all other particulars in respect to the management of general elections, so far as they may be applicable, shall govern all district elections, except as in this act otherwise provided; provided, however, that where a corporation owns real property within the boundaries of the district, the president, vice-president or secretary of such corporation shall be entitled to cast a vote on behalf of the corporation; provided also that an elector owning *or leasing* real property within the district need not reside within the district in order to vote, and provided that the board of commissioners shall canvass the returns of the first election and that thereafter, except as herein provided, the board of directors shall meet as a canvassing board and duly canvass the returns within four (4) days after any district election, including any district bond election. If the district lies in more than one county, the board of commissioners whose county contains the largest percentage of the territory of said district shall canvass the returns of the first election."

Section 5. Section 16-4520, R.C.M. 1947, is amended to read as follows:

"16-4520. **Publication.** Such notice shall be published for ten (10) consecutive days in a daily newspaper or in two (2) issues of a weekly newspaper published in each county wherein such district is located, which newspaper or newspapers shall be designated by the board of directors. Every qualified elector, owning *or leasing or residing upon* real property, within such voting precincts, but no others, shall be entitled to vote at such election. All the expenses of holding such election shall be borne by the district."

Section 6. This act is effective upon passage and approval.

Approved March 21, 1974

## CHAPTER NO. 258

AN ACT TO AMEND SECTION 54-132, R.C.M. 1947, RELATING TO THE CRIMINAL SALE OF DANGEROUS DRUGS.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 54-132, R.C.M. 1947, is amended to read as follows:

**"54-132. Criminal sale of dangerous drugs.** (a) A person commits the offense of a criminal sale of dangerous drugs if he sells, *barters, exchanges, gives away, or offers to sell, barter, exchange or give away*, manufactures, prepares, cultivates, compounds or processes any dangerous drug as defined in this act.

(b) A person convicted of criminal sale of dangerous drugs shall be imprisoned in the state prison for a term not less than one (1) year nor more than life.

(c) *Practitioners and agents under their supervision acting in the course of a professional practice are exempt from this section."*

Approved March 21, 1974

## CHAPTER NO. 259

AN ACT DELETING THE REQUIREMENT THAT PROPOSED PUBLIC HOUSING PROJECTS BE APPROVED BY POPULAR ELECTION, AND AMENDING SECTION 35-109, R.C.M. 1947; AND AMENDING SECTION 35-129, R.C.M. 1947, AS AMENDED, TO CONFORM WITH AMENDMENT TO SAID SECTION 35-109.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 35-109, R.C.M. 1947, is amended to read as follows:

**"35-109. Powers of authority.** An authority shall constitute a public body and a body corporate and politic, exercising public powers, and having all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this act, including the following powers in addition to others herein granted:

To investigate into living, dwelling and housing conditions and into the means and methods of improving such conditions; to determine where unsafe, or unsanitary dwelling or housing conditions exist; to study and make recommendations concerning the plan of any city or municipality located within its boundaries in relation to the problem of clearing, replanning and reconstruction of areas in which unsafe, or unsanitary dwelling or housing conditions exist, and the providing of dwelling accommodations for persons of low income, and to co-operate with any city, municipal or regional planning agency; to prepare, carry out and operate housing projects; to provide for the construction, reconstruction, improvement, alteration or repair of any housing project or any part thereof; to take over by purchase, lease or otherwise any housing project

located within its boundaries undertaken by any government; to act as agent for the federal government in connection with the acquisition, construction, operation and/or management of a housing project or any part thereof; to arrange with any city or municipality located in whole or in part within its boundaries or with a government for the furnishing, planning, replanning, installing, opening or closing of streets, options or property rights or for the furnishing of property or services in connection with a project;

To arrange with the state, its subdivision and agencies, and any county, city or municipality of the state, to the extent that it is within the scope of each of their respective functions, (a) to cause the services customarily provided by each of them to be rendered for the benefit of such housing authority and/or the occupants of any housing projects and (b) to provide and maintain parks and sewage, water and other facilities adjacent to or in connection with housing projects and (c) to change the city or municipality map, to plan, replan, zone or rezone any part of the city or municipality; to lease or rent any of the dwelling or other accommodations or any of the lands, buildings, structures or facilities embraced in any housing project and to establish and revise the rents or charges therefor; to enter upon any building or property in order to conduct investigations or to make surveys or soundings; to purchase, lease, obtain options upon, acquire by gift, grant, bequest, devise, or otherwise any property real or personal or any interest therein from any person, firm, corporation, city, municipality, or government;

To acquire by eminent domain any real property, including improvements and fixtures thereon; to sell, exchange, transfer, assign, or pledge any property real or personal or any interest therein to any person, firm, corporation, municipality, city, or government; to own, hold, clear and improve property, to insure or provide for the insurance of the property or operations of the authority against such risks as the authority may deem advisable; to procure insurance or guarantees from a federal government of the payment of any debts or parts thereof secured by mortgages made or held by the authority on any property included in any housing project;

To borrow money upon its bonds, notes, debentures or other evidences of indebtedness and to secure the same by pledges of its revenues, and (subject to the limitations hereinafter imposed) by mortgages upon property held or to be held by it, or in any other manner; in connection with any loan, to agree to limitations upon its right to dispose of any housing project or part thereof or to undertake additional housing projects; in connection with any loan by a government, to agree to limitations upon the exercise of any powers conferred upon the authority by this act; to invest any funds held in reserves or sinking funds, or any funds not required for immediate disbursement, in property or securities in which savings banks may legally invest funds subject to their control;

To sue and be sued; to have a seal and to alter the same at pleasure; to have perpetual succession; to make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority to make and from time to time amend and repeal bylaws, rules and regulations not inconsistent with this act, to carry into effect the powers and purposes of the authority;

To conduct examinations and investigations and to hear testimony and take proof under oath at public or private hearings on any matter material for its information;

To issue subpoenas requiring the attendance of witnesses or the production of books and papers and to issue commissions for the examination of witnesses who are out of the state or unable to attend before the authority, or excused from attendance; and to make available to such agencies, boards or commissions as are charged with the duty of abating or requiring the correction of nuisances or like conditions, or of demolishing unsafe or unsanitary structures within its territorial limits, its findings and recommendations with regard to any building or property where conditions exist which are dangerous to the public health, morals, safety or welfare.

Any of the investigations or examinations provided for in this act may be conducted by the authority or by a committee appointed by it, consisting of one or more commissioners, or by counsel, or by an officer or employee specially authorized by the authority to conduct it. Any commissioner, counsel for the authority, or any person designated by it to conduct an investigation or examination shall have power to administer oaths, take affidavits and issue subpoenas or commissions.

An authority may exercise any or all of the powers herein conferred upon it, either generally or with respect to any specific housing project or projects, through or by an agent or agents which it may designate, including any corporation or corporations which are or shall be formed under the laws of this state, and for such purposes an authority may cause one or more corporations to be formed under the laws of this state or may acquire the capital stock of any corporation or corporations.

Any corporate agent, all of the stock of which shall be owned by the authority or its nominee or nominees, may to the extent permitted by law exercise any of the powers conferred upon the authority herein. In addition to all of the other powers herein conferred upon it, an authority may do all things necessary and convenient to carry out the powers expressly given in this act. No provisions with respect to the acquisition, operation or disposition of property by other public bodies shall be applicable to an authority unless the legislature shall specifically so state."

Section 2. Section 35-129, R.C.M. 1947, is amended to read as follows:

**"35-129. Commissioners and powers of authority for a county.** The commissioners of a housing authority created for a county may be appointed and removed by the board of county commissioners of the county in the same manner as the commissioners of a housing authority created for a city may be appointed and removed by the mayor, and except as otherwise provided herein, each housing authority created for a county and the commissioners thereof shall have the same functions, rights, powers, duties and limitations provided for housing authorities created for cities and the commissioners of such housing authorities; provided, that for such purposes the term "mayor" or "council" as used in the housing authorities law and any amendments thereto shall be construed as meaning "board of county commissioners," the term "city clerk" as used

therein shall be construed as meaning "county clerk," the term "city" as used therein shall be construed as meaning "county" and the term "ordinance" shall be construed as meaning "resolution" unless a different meaning clearly appears from the context."

Approved March 21, 1974

## CHAPTER NO. 260

AN ACT TO REQUIRE THE RECLAMATION OF AREAS DISTURBED BY DRILLING OR EXPLORATION FOR OIL OR GAS, AND AMENDING SECTIONS 60-127 AND 60-128, R.C.M. 1947.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 60-127, R.C.M. 1947, is amended to read as follows:

"60-127. **Powers and duties of board.** A. The *board* has jurisdiction to exercise effectively the authority granted it by this act.

B. The *board* has authority, and it is its duty, to make such investigations as it deems proper to determine whether waste exists or is imminent or whether other facts exist which justify any action by the *board* under the authority granted by this act with respect thereto.

C. The *board* has authority, and it is its duty:

(1) To require: (a) identification of ownership of oil or gas wells, producing properties and tanks, (b) the making and filing of acceptable well logs, reports on well locations, and the filing of directional surveys, if made, provided, however, that logs of exploratory or wildcat wells need not be filed for a period of six (6) months following completion of such wells, (c) the drilling, casing, producing and plugging of wells in such manner as to prevent the escape of oil or gas out of one stratum into another, the intrusion of water into oil or gas stratum, blowouts, cavings, seepages, and fires: and the pollution of fresh water supplies by oil, gas, salt, or brackish water, (d) *the restoration of surface lands to their previous grade and productive capability after a well is plugged or a seismographic shot hole has been utilized, and necessary measures to prevent adverse hydrological effects from such well or hole, unless the surface owner agrees in writing, with the approval of the board or its representative, to a different plan of restoration,* (e) the furnishing of a reasonable bond with good and sufficient surety, conditioned for performance of the duty to properly plug each dry or abandoned well, (f) proper gauging or other measuring of oil and gas produced and saved to determine the quantity and quality thereof, (g) that every person who produces, transports or stores oil or gas in this state shall make available within this state for a period of five (5) years complete and accurate records of the quantities thereof, which records shall be available for examination by the *board* or its agents at all reasonable times, and that every such person file with the *board* such reports as it may prescribe with respect to quantities, transportations, and storages of such oil or gas.

(2) For the purpose of preventing waste, (a) to regulate the drilling, producing and plugging of wells, the shooting and chemical treatment of wells, the spacing of wells, operations voluntarily entered into to increase ultimate recovery such as cycling of gas, the maintenance of pressure, and the introduction of gas, water, or other substances into producing formations and (b) to fix, upon application made by any interested person after hearing, efficient gas-oil and water-oil ratios for any particular well or wells.

(3) To regulate disposal of salt water and oil field wastes.

(4) To classify wells as oil or gas wells for purposes material to the interpretation or enforcement of this act.

(5) To promulgate and to enforce rules, regulations and orders to effectuate the purposes and the intent of this act. *The board shall promulgate rules to implement parts (1)(d) of this subsection (c), no later than November 1, 1974.*

(6) To report as provided in section 2 [82-4002] of this act.

D. The *board* shall have power and it shall be its duty to determine and prescribe what producing wells shall be defined as "stripper wells" and what wells shall be defined as "wild cat wells," and to make such orders as in its judgment shall be required to protect such wells, and to provide that stripper wells may be produced to capacity if it is deemed necessary in the interest of conservation so to do.

E. With respect to any pool or pools from which gas was being produced by a gas well or gas wells on or prior to the date on which this act takes effect, this act shall never be so construed as to authorize the *board* at any time to limit or restrain the rate (daily or otherwise) of production of gas from such pool or pools by any well then or hereafter drilled and producing from such pool or pools to less than the rate at which such well can be produced without adversely affecting the quantity of gas ultimately recoverable by such well."

Section 2. Section 60-128, R.C.M. 1947, is amended to read as follows:

**"60-128. Notice of intention to drill.** It shall be unlawful to commence the drilling of a well for oil or gas without first giving to the *board* written notice of intention to drill, and obtaining a drilling permit as in this act hereafter provided. *It is unlawful to conduct seismic explorations with explosives without first giving the board a copy of the notice of intention to explore, filed with the county under Section 69-3303.*"

Section 3. There is a new section to be numbered 60-149, R.C.M. 1947, which reads as follows:

**60-149. Department to inventory abandoned wells and seismic operations; reclamation procedures.** (1) The department of natural resources and conservation shall maintain a list of the abandoned oil or gas wells, injection wells, sumps, and seismographic shot holes in the state which disturb land, water, or wildlife resources to a degree not in compliance with plugging, pollution prevention, and reclamation rules of the oil and gas board. This list shall be compiled from petitions or written statements from the owners of surface rights or lessees.



(2) The board shall check the list supplied by the department under the preceding subsection against its drilling records and shall determine the name of the person who abandoned the well, sump, or hole, whenever this information is available. When a person so listed applies to the board for a new drilling permit, the board may issue the permit only after approving a plan by which the applicant will reclaim the land disturbed by his abandoned wells, sumps, or holes within three years.

(3) When the person who abandoned a well, sump, or hole cannot be identified or located under the preceding subsection, the board shall notify the department of natural resources and conservation. The department may then reclaim the disturbed land with funds available from the resource indemnity trust fund, under section 84-7009, when available.

Approved March 21, 1974

## CHAPTER NO. 261

AN ACT TO AMEND SECTION 16-1904, R.C.M. 1947, TO ELIMINATE CERTAIN PROVISIONS PROHIBITING APPROPRIATIONS IN COUNTY BUDGET FROM EXCEEDING CERTAIN PERCENTAGE RESTRICTIONS OF THE AMOUNT APPROPRIATED IN THE PREVIOUS YEAR'S BUDGET.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 16-1904, R.C.M. 1947, is amended to read as follows:

**"16-1904. Hearings on budget — adoption — fixing tax levies.** (1) On the Wednesday immediately preceding the second Monday in August the county commissioners shall meet at the time and place designated in the notice provided for in section 16-1903, at which time any taxpayer may appear and be heard for or against any part of such budget. Such hearing shall be continued from day to day and shall be concluded and terminated and the budget finally approved and adopted on the second Monday in August and before the fixing of the tax levies by such board.

(2) Upon the conclusion of such hearing the board shall first determine and fix the amount which it is estimated will accrue to each fund during the fiscal year from all sources, except the taxation of property, but in so doing the board shall not include any amount which it is anticipated may be received during the fiscal year from the payment of taxes which became delinquent during any preceding fiscal year, or years. The board shall then determine and fix separately the amount appropriated for and authorized to be expended for each item in the budget and shall specify the fund or funds against which warrants are to be drawn and issued for each item in the budget and shall specify the fund or funds against which warrants are to be drawn and issued for the expenditures so authorized; provided that there shall not be added to the amount to be appropri-

ated and authorized to be expended for any item, or to the total amount appropriated and authorized to be expended from any fund any amount or percentage whatever because of any anticipated loss of revenue by reason of the nonpayment of taxes levied for such fiscal year; and provided further that the total expenditures authorized to be made from any fund, including reserve added thereto as hereinafter provided, shall not, in any event, exceed the aggregate of the cash balance in such fund at the close of the fiscal year immediately preceding, the amount of estimated revenues to accrue to such funds, as determined and fixed in the manner herein provided, and the amount which may be raised for such fund by a lawful tax levy during the fiscal year.

(3) The board shall then determine and fix the amount to be raised for each fund by tax levy by adding together the cash balance in the fund at the close of the fiscal year immediately preceding and the amount of the estimated revenues, if any to accrue thereto during the current fiscal year, as before ascertained and determined, and then deducting the total amount so obtained from the total amount of the appropriations and authorized expenditures from the fund as determined and fixed by said board, the amount remaining being the amount necessary to be raised for the fund by tax levy during the current fiscal year; provided that the board may add to the amount so found necessary to be raised for any fund by tax levy during the current fiscal year, an additional amount as a reserve to meet and care for expenditures to be made from such fund during the months of July to November, inclusive, of the next ensuing fiscal year under the annual budget to be thereafter adopted for such next ensuing fiscal year, but the amount which may be so added to any fund, as such reserve for such purpose, shall not exceed one-third of the total amount appropriated and authorized to be expended from such fund during the current fiscal year, after deducting from the amount of such appropriations and authorized expenditures the total amount, if any, therein appropriated and authorized to be expended for election expenses and payment of emergency warrants; provided further that the total amount, to be raised by tax levy for any fund, during such current fiscal year, including the amount of such reserve and any amount for payment of election expenses and emergency warrants, must not exceed the total amount which may be raised for such fund by a tax levy which does not exceed the maximum levy permitted by law to be made for such fund.

If the cash balance remaining in any of the several county funds, except the school fund, at the end of a fiscal year, exceeds the amount to be budgeted to that fund, such excess may be transferred to other funds as the county commissioners deem for the best interest of the county after a public hearing. Notice of said hearing must be given not less than thirty (30) days prior to said hearing by publication in a newspaper of general circulation in the county and by posting in five (5) public places. Said notice must state the date, time and place of said hearing and state generally the purpose and proposed use of said funds.

(4) The budget as finally determined, in addition to setting out separately each item for which any appropriation or expenditure is authorized and the fund out of which the same is to be paid, shall set out the total amount appropriated and authorized to be expended from each fund, the

cash balance in the fund at the close of the last preceding fiscal year, the amount, if any, which it is estimated will accrue to the fund from sources other than taxation, the reserve, if any, for the next ensuing fiscal year, and the amount necessary to be raised for each fund by tax levy during the current fiscal year. The board shall then by resolution approve and adopt the budget as so finally determined and enter the same at length and in detail in the official minutes of the board.

(5) On the second Monday in August, and after the approval and adoption of the final budget, the board of county commissioners shall fix the tax levy for each fund at such rate as will raise the amount set out in such budget as the amount necessary to be raised by tax levy for such fund during the current fiscal year, and no more; provided, that the taxable valuation of the county for the then current fiscal year shall be the basis for determining the amount of the tax levy for each fund, and each tax levy shall be at a rate no higher than is required on such basis, without including any amount for anticipated tax delinquency, to produce the amount set out in the budget without including any amount for anticipated tax delinquency, as being the amount to be raised by tax levy, and shall be made in the manner provided by section 84-3802.

(6) The county clerk and recorder shall, not later than the fifteenth day of September following, forward a full, complete, itemized and detailed copy of the final budget, together with the tax levies made therefor, to the state examiner. If any county clerk and recorder shall fail, refuse, or neglect to forward such copy of the budget to the state examiner within such time, the state examiner shall, before the first day of October immediately following, notify the board of county commissioners of such county that such copy of budget has not been forwarded to him by the county clerk and recorder, and such board of county commissioners must thereupon withhold from said county clerk and recorder his salary for the month of September until such time as such county clerk and recorder shall file with such board a receipt from the state examiner showing the receipt by him of such copy."

Approved March 21, 1974

## CHAPTER NO. 262

AN ACT AMENDING SECTION 94-5-105, R.C.M. 1947, TO PROVIDE FOR A MANDATORY DEATH SENTENCE WHEN THE DEFENDANT IS CONVICTED OF DELIBERATE HOMICIDE FOR THE KILLING OF A PEACE OFFICER PERFORMING HIS DUTY, REGARDLESS OF MITIGATING CIRCUMSTANCES.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 94-5-105, R.C.M. 1947, is amended to read as follows:

"94-5-105. **Sentence of death for deliberate homicide.** (1) When a defendant is convicted of the offense of deliberate homicide the court shall impose a sentence of death in the following circumstances, unless there are mitigating circumstances:

(a) The deliberate homicide was committed by a person serving a sentence of imprisonment in the state prison; or

(b) The defendant was previously convicted of another deliberate homicide; or

(c) The deliberate homicide was committed by means of torture; or

(d) The deliberate homicide was committed by a person lying in wait or ambush; or

(e) The deliberate homicide was committed as a part of a scheme or operation which, if completed, would result in the death of more than one person.

(2) *Notwithstanding the provisions of subsection (1) and regardless of circumstances, when a defendant is convicted of the offense of deliberate homicide under subsection (1) (a) of section 94-5-102 in which the victim was a peace officer killed while performing his duty the court shall impose a sentence of death."*

Approved March 21, 1974

## CHAPTER NO. 263

AN ACT CREATING A GUBERNATORIAL CAMPAIGN FUND; ALLOWING A TAXPAYER TO DESIGNATE ONE DOLLAR (\$1) OF HIS TAX LIABILITY TO THAT FUND; PROVIDING THAT MONIES BE PAID FROM THE FUND TO THE TREASURER OF EACH QUALIFYING POLITICAL PARTY TO BE USED FOR GUBERNATORIAL CAMPAIGN EXPENSES; PROVIDING FOR A PENALTY FOR MISUSE OF THE FUNDS; AND PROVIDING FOR A TERMINATION DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is a new section to be numbered 23-4901, R.C.M. 1947, which reads as follows:

23-4901. **Purpose.** It is the purpose of this act to allow the conduct of an experiment in the public financing of political campaigns in this state; to determine public reaction to grass roots participation in campaign financing through a designation by a taxpayer of one dollar (\$1) of his tax liability to a campaign fund; and to allow legislative review of public campaign financing based upon the results of the limited experiment authorized by this act.

Section 2. There is a new section to be numbered 23-4902, R.C.M. 1947, which reads as follows:

23-4902. **Definitions.** As used in this act, unless the context requires otherwise:

(1) "Fund" means the election campaign fund established in section 4 [23-4904] of this act.

(2) "Political party" is a party whose candidate for governor in the last general election received five percent (5%) or more of the total votes cast for that office as verified by the secretary of state.

(3) "Department" means the department of revenue provided for in title 82A, chapter 18.

(4) "Candidate" means an individual who has been nominated by a political party for election to the office of governor of this state.

(5) "Individual" means a natural person.

Section 3. There is a new section to be numbered 23-4903, R.C.M. 1947, which reads as follows:

23-4903. **Designation by taxpayer.** (1) An individual whose income tax liability under title 84, chapter 49 for a taxable year is one dollar (\$1) or more may designate one dollar (\$1) be paid over to the fund. In the case of a joint return, as provided in section 84-4914, of a husband and wife having an income tax liability of two dollars (\$2) or more, each spouse may designate one dollar (\$1) be paid to the fund.

(2) The department shall provide a place on the face of the blank form of return, provided for in section 84-4919, where an individual may make the designation provided for in subsection (1). The form shall adequately explain the individual's option to designate one dollar (\$1) to the fund and that a designation does not increase tax liability.

Section 4. There is a new section to be numbered 23-4904, R.C.M. 1947, which reads as follows:

23-4904. **Election campaign fund.** (1) There is an election campaign fund within the earmarked revenue fund provided for in section 79-410.

(2) All monies designated under section 2 [23-4902] of this act shall be deposited in the fund.

(3) Five (5) months before the general election in a gubernatorial election year all monies in the fund shall be paid over in equal amounts to the treasurer of each political party, to be spent only for the legitimate campaign expenses of the gubernatorial candidate.

Section 5. There is a new section to be numbered 23-4905, R.C.M. 1947, which reads as follows:

23-4905. **Records to be kept — open to inspection.** (1) The treasurer of each political party shall maintain a complete record of all disbursements of funds received by him under section 3 [23-4903] and used for the candidate's campaign expenses plus receipts or other evidence of each expense.

(2) The record shall be available for inspection by anyone at any reasonable time. A copy shall be deposited in the office of the secretary of state by December 31 of each general election year.

Section 6. There is a new section to be numbered 23-4906, R.C.M. 1947, which reads as follows:

23-4906. **Penalties for violation.** The use of moneys from the fund by anyone for any purpose other than the legitimate campaign expenses of a candidate for governor is an offense and is punishable by imprisonment for not more than one (1) year, or by a fine of not more than five thousand dollars (\$5,000), or by both.

Section 7. This act terminates on July 1, 1977.

Approved March 21, 1974

## CHAPTER NO. 264

### AN ACT RELATING TO THE AUTHORITY OF PUBLIC EMPLOYEES TO ENTER INTO A DEFERRED COMPENSATION PLAN.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is a new section to be numbered 68-2701, R.C.M. 1947, which reads as follows:

68-2701. **Deferred compensation programs permitted.** The state or any county, city, town, or other political subdivision may establish, after reaching agreement with any employee or the employee's representative if one has been designated or certified, a program for employees to defer any portion of that employee's compensation up to the maximum allowed by the Internal Revenue Code in a plan qualified for exemption under applicable sections of the Internal Revenue Code.

Section 2. There is a new section to be numbered 68-2702, R.C.M. 1947, which reads as follows:

68-2702. **Department of administration to coordinate.** The department of administration is hereby authorized to enter into such contractual agreements with employees or the employee's representative if one has been designated or certified, on behalf of the state to defer any portion of that employee's compensation through any qualified plan agreed upon by the employee or his representative. The department of administration may establish rules and regulations for the proper operation of these plans.

Section 3. There is a new section to be numbered 68-2703, R.C.M. 1947, which reads as follows:

68-2703. **Payroll deductions — contracts for administrative services.** The coordination of the deferred compensation program shall

be under the direction of the department of administration or his designee or the appropriate officer designated by the county, city, town, or other political subdivision. Payroll deductions shall be made, in each instance, by the appropriate payroll officer. The coordinator of the deferred compensation program may contract with a private corporation or institution for providing consolidated billing and other administrative services.

Section 4. There is a new section to be numbered 68-2704, R.C.M. 1947, which reads as follows:

**68-2704. "Employee" defined.** For the purposes of this act, "employee" means any person whether appointed, elected, or under contract, providing services for the state, county, city, town, or other political subdivision, for which compensation is paid.

Section 5. There is a new section to be numbered 68-2705, R.C.M. 1947, which reads as follows:

**68-2705. Payments authorized — proper use of public assets.** Notwithstanding any other provision of law to the contrary, the department of administration or the appropriate officer of the county, city, town, or other political subdivision designated to coordinate the deferred compensation program is hereby authorized to make payments to qualified plans designated by this act. Such payments shall not be construed to be a prohibited use of the general assets of the state, county, city, town, or other political subdivision.

Section 6. There is a new section to be numbered 68-2706, R.C.M. 1947, which reads as follows:

**68-2706. No other retirement programs affected.** The deferred compensation program established by this act shall exist and serve in addition to retirement, pension, or benefit systems, including plans qualifying under section 403(b) of the Internal Revenue Code of 1954, established by the state, county, city, town, or other political subdivision, and no deferral of income under the deferred compensation program shall affect a reduction of any retirement, pension, or other benefit provided by law. However, any sum deferred under the deferred compensation program shall not be subject to taxation until distribution is actually made to the employee. For purposes of this act any qualified private pension plans now in existence shall qualify under this act.

Section 7. There is a new section to be numbered 68-2707, R.C.M. 1947, which reads as follows:

**68-2707. No liability to public entity.** There shall be no financial liability of the state, county, city, town or other political subdivision for any losses incurred by any plan established under this act.

Section 8. There is a new section to be numbered 68-2708, R.C.M. 1947, which reads as follows:

**68-2708. Legislative intent.** It is the legislative intent of this act that all qualified deferred compensation plans shall be established only with companies, trusts or agents licensed to do business in the state of Montana.

Section 9. There is a new section to be numbered 68-2709, R.C.M. 1947, which reads as follows:

68-2709. **Severability.** It is the intent of the legislature that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved March 21, 1974

## CHAPTER NO. 265

AN ACT TO AMEND SECTION 89-872, R.C.M. 1947, ALLOWING THE DEPARTMENT OF FISH AND GAME TO ACT AS THE PUBLIC REPRESENTATIVE IN STREAM ADJUDICATIONS UNDER THE MONTANA WATER USE ACT.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 89-872, R.C.M. 1947, is amended to read as follows:

"89-872. **Declarations of existing rights.** (1) The department shall make an order requiring each person claiming an existing right within a specified area or from a specified source to file a declaration of existing right within one (1) year after the effective date of the order. The department shall publish notice of the order once a week for four (4) consecutive weeks prior to its effective date in a newspaper of general circulation in the affected area. Before the last date of publication, the department shall also serve a copy of the order by certified mail upon each appropriator or his successor in interest within the specified area or from the specified source who has requested mailed notice of the order or of whom the department can readily obtain knowledge, and to each person owning or being possessed of lands bordering on the stream or source as ascertained from the land ownership records of the appropriate county. The department shall file in its records proof of service of the notice by affidavit of the publisher in the case of notice by publication, and by its own affidavit in the case of service by mail.

(a) *The department of fish and game may represent the public for purposes of establishing any prior and existing public recreational use in existing right determinations under this act, provided that the foregoing shall not be construed in any manner as a legislative determination of whether or not a recreational use sought to be established prior to July 1, 1973, is or was a beneficial use.*

(2) A declaration shall be made under oath by each person claiming an existing right to use water within the specified area or from the specified source on a form provided by the department. The department shall make the forms available through its offices and the offices of the county clerks and recorders. The information required by the department may



include, but is not limited to, the date of appropriation, the date the water was first applied to a beneficial use, the amount of water appropriated, the purpose of the appropriation, the place and means of diversion, the place of use, the time during which the water is diverted and used each year, and a true copy or the docket number of any judicial decree, notice, or other claim or evidence upon which the existing right was initiated or is based.

(3) Declarations shall be sent to the department by certified mail, with a return receipt requested. The return receipt is conclusive evidence of receipt, by the department, of the declaration."

Approved March 21, 1974

## CHAPTER NO. 266

AN ACT TO MAKE AVAILABLE TO A WOMAN WHO REQUESTS AN ABORTION, AT LEAST TWO (2) COUNSELING SESSIONS WITH A QUALIFIED COUNSELOR, AND PROVIDING QUALIFICATIONS FOR SUCH COUNSELORS.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is a new section to be numbered 69-6901, R.C.M. 1947, which reads as follows:

69-6901. **Purpose of act.** The state of Montana, recognizing the complexity and gravity of decisions associated with medical termination of pregnancy, declares it the policy of the state to provide for the accessibility of approved counseling services for any female resident of Montana who may request medical termination of her pregnancy. The policy stated in this act shall be a minimum standard for abortion counseling services and is not intended to limit the availability.

Section 2. There is a new section to be numbered 69-6902, R.C.M. 1947, which reads as follows:

69-6902. **Definitions.** For the purposes of this act, the following terms are defined as follows:

- (1) Abortion is the intentional termination of pregnancy.
- (2) The division is the division of maternal and child health care of the department of health and environmental sciences.
- (3) Approved counselor is a person approved by the division for the counseling provided for in this act.
- (4) Medical facility is any office, clinic, or hospital where abortion or the scheduling of abortion takes place.
- (5) Priority appointment is any appointment with a counselor approved by the division for abortion counseling, which shall be arranged at the earliest reasonable time in the counselor's schedule.

Section 3. There is a new section to be numbered 69-6903, R.C.M. 1947, which reads as follows:

69-6903. **Purpose of counseling.** The purpose of the counseling of patients considering abortion shall be:

- (a) to assist the patient in recognizing and evaluating all of the possible alternatives open to her;
- (b) to encourage the patient to face and express her deep feelings in regard to the multiple aspects of abortion;
- (c) to enhance the mental stability of the patient in regard to her decision;
- (d) to encourage the responsible facing of any decision in regard to abortion at the earliest possible state of her pregnancy.

Section 4. There is a new section to be numbered 69-6904, R.C.M. 1947, which reads as follows:

69-6904. **Responsibility of the division.** (1) The division shall approve persons who are able to provide effective consultation concerning problem pregnancy as abortion counselors. There shall be sufficient counselors approved to meet the demand for their services.

(2) The division shall prepare a list of approved counselors and disseminate it to the public through the assistance of cooperative physicians, medical facilities, social workers, school counselors, and other means deemed appropriate.

Section 5. There is a new section to be numbered 69-6905, R.C.M. 1947, which reads as follows:

69-6905. **Approval of counselors.** (1) The division in consultation with the mental health division of the board of institutions, shall develop criteria and standards concerning the approval of counselors called for in this act. These criteria should include, but not be limited to, consideration of the following qualifications:

- (a) proficiency, experience, and training in the field of counseling;
- (b) understanding of the problems related to abortion;
- (c) ability to remain objective in regard to the patient's choice of alternative courses of action;
- (d) ability to hold in confidence all personal information revealed in or, in regard to counseling sessions.

(2) In its process of evaluating and approving counselors for the implementation of this act, the division shall cooperate with appropriate state agencies and local government subdivisions, subject to ethical considerations as practiced by accredited medical and therapeutic professions.

(3) Approved counselors for the purpose of this act may be chosen from among local representatives of such professions as: psychologists, social workers, clergymen, nurses, school counselors, mental health personnel, and family planning counselors.

(4) The division shall assist and make use of medically creditable resources offered by existing programs and agencies which deal with counseling.

(5) The division shall be responsible for re-evaluating the counseling services provided for in this act at intervals of not more than five (5) years.

Section 6. There is a new section to be numbered 69-6906, R.C.M. 1947, which reads as follows:

**69-6906. Responsibility of medical facilities.** (1) Upon first indication by a female patient or potential patient that medical termination of pregnancy is being considered, a physician or medical facility shall inform the patient of the availability of qualified counselors and shall, with the patient's approval, refer her to an approved counselor for a priority appointment.

(2) In the case of an unmarried minor, the physician, or medical facility, or their designate, shall make a priority appointment for the patient to meet with an approved counselor of the patient's choice.

Section 7. There is a new section to be numbered 69-6907, R.C.M. 1947, which reads as follows:

**69-6907. Minimum counseling services.** (1) Minimum counseling services shall be provided to any pregnant woman residing in Montana who may express an interest in terminating her pregnancy.

(2) Minimum counseling services shall include, but may not be limited to, one counseling session before and one after a termination of pregnancy.

(3) If reasonable, and desired by the patient, the counselor may include the father of the unborn child or any other pertinent family members in a subsequent meeting with the patient.

(4) Where the person seeking the counseling cannot afford to pay the minimum fee, the division will find a counselor who is reasonably accessible for the patient who will provide counseling services at no cost.

Section 8. There is a new section to be numbered 69-6908, R.C.M. 1947, which reads as follows:

**69-6908. When counseling required.** No abortion may be contingent upon completion of counseling.

Approved March 21, 1974

## CHAPTER NO. 267

AN ACT REVISING AND UPDATING THE "COAL MINING CODE"; EXTENDING THE REGULATION OF COAL MINING TO MEET THE REQUIREMENTS OF THE FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969; AMENDING SECTIONS 50-401 THROUGH 50-405, 50-407, 50-428 THROUGH 50-434 AND 50-468, R.C.M. 1947;

AND REPEALING SECTIONS 50-406, 50-410 THROUGH 50-427, 50-435 THROUGH 50-465, 50-467, 50-469 THROUGH 50-475, 50-501 THROUGH 50-509, AND 50-511 THROUGH 50-531, R.C.M. 1947; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 50-401, R.C.M. 1947, is amended to read as follows:

"50-401. **Short title.** This *chapter* shall be known *and may be cited* as the "*Montana Coal Mining Code*."

Section 2. There is a new section to be numbered 50-401.1, R.C.M. 1947, which reads as follows:

50-401.1. **Definitions.** As used in this chapter:

(1) "Division" means the division of workmen's compensation of the department of labor and industry provided for in 82A-1004, and the state coal mine inspectors employed by the division.

(2) "Mine" and "coal mine" means all parts of the property of a mining plant which contribute, directly or indirectly, under one management, to the mining or handling of coal.

(3) "Excavations" and "workings" means all parts of a mine excavated or being excavated, including shafts, slopes, tunnels, entries, rooms, and working place, whether abandoned or in use.

(4) "Shaft" means any vertical opening through the strata which is or may be used for the purpose of ventilation or escape, or for hoisting or lowering of men or material in connection with the mining of coal.

(5) "Slope" and "drift" means respectively an incline or horizontal way, opening, or tunnel to a seam of coal to be used for the same purpose as a shaft.

(6) "Following shot" means a shot which is dependent in its action on the result of another shot.

(7) "Operator" as applied to the party in control of a mine under this chapter, means the person, firm, or body corporate who is the immediate proprietor as owner or lessee of the plant, and, as such, is responsible for the condition and management thereof.

(8) "Mine foreman" means a person who is charged with the general direction of the underground work, or both the underground work and the outside work of a coal mine, and who is commonly known and designated as "mine boss".

(9) "Mine examiner" means a person charged with the examination of the condition of the mine before the miners are permitted to enter it, and who is commonly known as the "fire boss".

(10) "Gassy mine" means a mine is considered to be potentially gassy. The division may further define this term in its rules.

Section 3. Section 50-402, R.C.M. 1947, is amended to read as follows:

**"50-402. Coal mine inspector—appointment, compensation and term.** The *division* shall appoint *state coal mine inspectors for the enforcement of this chapter.*"

Section 4. Section 50-403, R.C.M. 1947, is amended to read as follows:

**"50-403. Qualifications of inspector.** A person *is not* eligible to be a state coal mine inspector *unless he is* a citizen of the United States, a resident of *this state*, *has been actually employed in coal mining five (5) years before his appointment*, and *holds a mine foreman's certificate and a mine inspector's certificate from this state.*"

Section 5. Section 50-404, R.C.M. 1947, is amended to read as follows:

**"50-404. Powers and duties of division.** (1) The *division may* enter, inspect, and examine any coal mine or any shaft, drift, or slope in the process of sinking for the purpose of mining coal in this state, and the workings and the machinery belonging thereto, at all reasonable times, either by day or night, but not so as to impede or obstruct the workings of the mine.

(2) *The division shall immediately notify the owner, lessee, superintendent, or mining boss of the discovery of any violation of the mining laws of this state, and of the penalty thereby imposed for those violations; and if the notice is disregarded, the division may stop immediately the working and operation of any mine or any part thereof where any dangerous or unlawful conditions are found. However, where conditions justify the division in so doing, it may grant a reasonable length of time for making repairs or for putting the mine in proper condition, but the number of workers employed in the mine or in the section of the mine involved shall be limited to those necessary to correct the unsafe condition. Where any stops or cessation of work are enforced, the division may thereafter allow the mine or part of a mine to be reopened when the dangerous or unlawful conditions existing there are removed or remedied so that they no longer exist.*

(3) The owner, lessee, operator, superintendent, or mining boss of the mine is required to furnish the means necessary for the entry, inspection, examination, inquiry, and exit. *The division shall carefully examine all the coal mines in operation in this state at least every three (3) months, and more often if necessary, to see that every precaution is taken to insure the safety of all workers that may be engaged in the coal mine. The division shall make a record of the visit, noting the time and the material circumstances of the inspection. If the division has in its possession any complaint to the effect that this chapter is being violated, it shall notify the employer and the employees that it is about to make an inspection. The employees' representative has the right to accompany the division in making an official mine inspection. The owner or operator has the right to personally accompany the division while inspecting his property, or to designate someone to accompany the division.*"

Section 6. Section 50-405, R.C.M. 1947, is amended to read as follows:

**"50-405. No conflict of interests by mine inspector.** A state coal mine inspector *may not* act as agent for a corporation, superintendent,

or manager of *a mine*, and shall in no manner be *in* the employ of mining companies, nor shall he be interested in any *way in* coal mining operations, either as owner, lessee, or otherwise."

Section 7. Section 50-407, R.C.M. 1947, is amended to read as follows:

"50-407. **Division to post statement of conditions at some conspicuous location.** The *division* shall post in some conspicuous *location* at each mine visited and inspected by *it* a plain statement of the conditions of *the* mine, showing what, in *its* judgment, is necessary for the better protection of the lives and health of persons employed in *the* mine. *The* statement, signed by the *division* inspector, shall give the date of inspection. Where a local union has jurisdiction over the mine inspected, the *division shall post three (3) copies of the statement of conditions within one (1) week after making the inspection. It shall also post a copy at the landing used by the workers, stating what number of workers may be permitted to ride on the cage, car or cars at one time.*"

Section 8. There is a new section to be numbered 50-412.1, R.C.M. 1947, which reads as follows:

50-412.1. **Division may adopt rules.** The division may adopt rules to carry out the provisions of this chapter, and safety standards for all coal mines in this state.

Section 9. Section 50-428, R.C.M. 1947, is amended to read as follows:

"50-428. **Necessary to have maps of coal mines.** Every operator of every coal mine in this state shall make or cause to be made an accurate map or plan of *the* mines, drawn to a scale of not less than two hundred feet (200') to one inch (1"), and as much larger as practicable, on which shall appear the name of the state, county, and township in which the mine is located, the designation of the mine, the name of the company or owner, the certificate of the *certified* engineer or surveyor as to the accuracy and date of the survey, the north point, and the scale to which the drawing is made."

Section 10. Section 50-429, R.C.M. 1947, is amended to read as follows:

"50-429. **Underground survey.** For the underground working the map shall show all *power distribution and ventilation in maps and all* shafts, slopes, tunnels, or other openings to the surface or to the workings of a contiguous mine; all excavations, entries, rooms and crosscuts; the rise or dip of the seam from the bottom of the shaft, mouth of drift, or slope in either direction to the face of the workings; the location of the fan; the location of the permanent pumps, hauling engines, engine-planes, and fire-walls; the location of any standing water which might prove a menace to life or danger to property from flood; and the line of any contiguous surface outcrop of the seam."

Section 11. Section 50-430, R.C.M. 1947, is amended to read as follows:

"50-430. **Map for every seam.** A separate and similar map *for all active mining areas*, drawn to the same scale in all cases, shall be made

of every seam, which shall be worked in any mine, and the maps of all seams shall show all shafts, drifts, tunnels, incline planes, or other passageways connecting *them*."

Section 12. Section 50-431, R.C.M. 1947, is amended to read as follows:

"50-431. **Map of the surface.** Every map or plan, or, at the option of the operator, a separate map, shall show the surface boundary lines contiguous to the workings and pertaining to each mine, also all section or quarter-section lines and corners, town lots and streets, the tracts and side tracts of all railroads, the location of all wagon roads, rivers, streams, ponds, buildings, landmarks, and principal objects on the surface within the boundary lines; and in all cases, if of *an underground mine*, it shall be drawn on *a transparency* so that it can be laid upon the map of the underground workings, and indicate the relative location of the lines and objects on the surface to the excavations of the mine."

Section 13. Section 50-432, R.C.M. 1947, is amended to read as follows:

"50-432. **Copies of maps for division.** The original or true copies of all maps shall be kept in the office at the mine, and true copies shall also be furnished the *division* within thirty (30) days after *their* completion. The maps delivered to the *division* shall *become* the property of the state. They shall be kept at the office of the *division* and be open to inspection by all persons interested in *them*. An examination shall only be made in the presence of *a division* inspector, and he shall not permit any copies of *them* to be made without the written consent of the operator or owner of the property, under penalty of removal from office."

Section 14. Section 50-433, R.C.M. 1947, is amended to read as follows:

"50-433. **Semiannual surveys.** (1) An extension of the last preceding survey of every mine in active operation shall be made once every six (6) months and the result of *the* survey, with the date, shall be promptly and accurately entered upon the original maps so as to show all changes in plan or new work in the mine, and all extensions of the workings to the most advanced boundary of *the* workings which have been made since the preceding survey. The changes and extensions shall be entered *on* the copies of the maps of the *division*, or new copies furnished *it*, within thirty (30) days after the last survey is made. *When* the operator of *a* mine *neglects* or *refuses*, or for any cause not satisfactory to the *division* *fails*, for a period of three (3) months, to furnish the *division* the map or plan of *the* mine, or a copy, or of the extension, the *division* *may* make or cause to be made an accurate map or plan of *the* mine at the expense of the owner or lessee, and the cost may be recovered from *the* owner, lessee, or operator, in the same manner as other debts by suit in the name of the state.

(2) The *division* shall require an extension of the last preceding survey, once every twelve (12) months, of every mine in active operation in which five (5) men or less are employed on any one shift."

Section 15. Section 50-434, R.C.M. 1947, is amended to read as follows:

"50-434. **Abandoned mines.** (1) When a coal mine is worked out, or is about to be abandoned, or indefinitely closed, the operator shall make or cause to be made a final survey of all available parts of *the* mine, and the results shall be duly extended on all maps *and copies* of the mine, to show all excavations and the most advanced workings of the mine, and their exact relations to the boundary or section lines on the surface.

(2) The *division* may order a survey to be made of the workings of a mine which is about to be abandoned, or of which *it* has reason to believe the maps are inaccurate, whenever in *its* judgment the safety of the *workers*, the support of the surface, the conservation of the property, or the safety of an adjoining mine requires it. *The* survey shall be *at the expense of the state.*"

Section 16. There is a new section to be numbered 50-434.1, R.C.M. 1947, which reads as follows:

50-434.1. **Boundary lines.** In no case shall the workings of a coal mine be driven nearer than fifty feet (50') to the boundary line of the coal rights pertaining to the mine, except for the purpose of establishing connecting workings between properties owned by the same person, or an underground communication between contiguous mines as provided for elsewhere in rules adopted by the division.

Section 17. There is a new section to be numbered 50-467.1, R.C.M. 1947, which reads as follows:

50-467.1 **Nonpermissible internal-combustion engines.** Nonpermissible internal combustion engines or other machinery which gives off noxious fumes may not be permitted underground in any coal mine.

Section 18. Section 50-468, R.C.M. 1947, is amended to read as follows:

"50-468. **Airways.** *The* owner, lessee, or operator of every coal mine *shall* provide and maintain airways of sufficient dimensions, and in no case shall the area of the air-course be less than twenty-five (25) *square* feet in mines operated *in any underground* system."

Section 19. There is a new section to be numbered 50-476, R.C.M. 1947, which reads as follows:

50-476. **Duties of other employees.** (1) A person may not enter a mine generating firedamp so as to be detected by a safety lamp until the mine examiners make a report to the division.

(2) A person, unless accompanied by the mine examiner, may not go beyond a danger signal until all standing gas discovered has been removed or diluted and rendered harmless by a current of air. A person, being ordered to withdraw by the mine foreman or mine examiner from the mine on account of the interruption of the ventilation, may not re-enter the mine until given permission to do so by the mine foreman.



(3) A person other than the mine examiner may not remove any caution board or danger signal placed at the entrance to any working place, or at the entrance to any old workings in a mine.

(4) A person may not erase or change a mark of reference or monument made in connection with a measurement; change marks or dates or any caution board, or erase or change the dates at room or entry face, when made by the mine examiner, or take for his use a life check not issued to him under rules adopted by the division, or change the checks on cars, wrongfully check a car, or do any act with intent to defraud. A person may not take anything containing fire, except as provided for in rules adopted by the division, into an underground mine.

(5) A person may not place refuse in or obstruct an airway or breakthrough used as an airway. A worker or other person may not damage or alter a water gauge, barometer, air-course, brattice equipment, machinery, or livestock; obstruct or throw open any airway; handle or disturb any part of the machinery of the hoisting engine of a mine, open a door of a mine and neglect to close it; endanger the miners or those working therein; disobey an order given in pursuance of law, or do a willful act endangering the lives or health of persons working there or the security of a mine or machinery.

Section 20. There is a new section to be numbered 50-477, R.C.M. 1947, which reads as follows:

**50-477. Notice to inspectors.** Within fifteen (15) days after the close of each calendar month the operator of a coal mine shall report to the division the tons of coal produced each day during the preceding month. Immediate notice must be conveyed to the division by the operator interested:

(1) when an accident occurs whereby a person receives serious or fatal injury;

(2) when work is commenced to sink a shaft, slope or drift, either for hoisting or escape purposes;

(3) when there is intent to abandon a mine or to reopen an abandoned mine;

(4) upon the appearance of a large body of firedamp in a mine, whether accompanied by explosion or not, and upon the occurrence of a serious fire within the mine or on the surface around the mine;

(5) when the workings of a mine are approaching near an abandoned mine believed to contain accumulation of water or gas; or,

(6) upon the accidental closing or intended abandonment of a regularly established passageway to an escape outlet.

Section 21. There is a new section to be numbered 50-478, R.C.M. 1947, which reads as follows:

**50-478. Duty of division.** (1) When advised by an operator of any accident in a coal mine involving loss of life or serious personal injury, the division shall, if it considers it necessary from the facts reported, and

in all cases of loss of life, immediately have an inspector go to the scene of the accident within forty-eight (48) hours of notification. Every operator of a coal mine, or his agent, shall make and preserve for the information of the division, upon uniform blanks furnished by the division, a record of all injuries sustained by any employees on the premises.

(2) The division may also make any original or supplementary investigation which it considers necessary as to the nature and cause of an accident, and shall make a record of the circumstances and of the result of the investigations for its files.

(3) The inspection team shall include a division coal mine inspector, the employer or his designee, and a representative of the employees.

(4) The operator shall, upon being notified of a fatality in a coal mine, relay that information promptly to the district office of the miners' organization. The representative of the miners' organization, or some person delegated by him, may enter any coal mine for the purpose of investigating the causes of a fatal accident.

Section 22. There is a new section to be numbered 50-479, R.C.M. 1947, which reads as follows:

**50-479. Hoisting — licensing of hoisting engineers.** Hoisting of personnel and licensing of hoisting engineers shall be performed in mines under the provisions of the law and rules and standards adopted by the division.

Section 23. There is a new section to be numbered 50-480, R.C.M. 1947, which reads as follows:

**50-480. Inspections and investigations — access to mine — order to close mine or abate violation — notice — hearing and review.** The division may at any time perform such inspections and investigations as it considers necessary in surface and underground mines which are subject to this chapter for the purpose of obtaining, utilizing, and disseminating information relating to health and safety conditions in the mines, the causes of accidents involving bodily injury or loss of life, or the causes of occupational diseases originating therein, and for the purpose of determining whether there is compliance with a health and safety standard or order issued under this chapter.

Section 24. There is a new section to be numbered 50-480.1, R.C.M. 1947, which reads as follows:

**50-480.1. Inspections — continued.** For the purpose of making an inspection or investigation authorized by this chapter, representatives of the division may enter, upon or through, any mine which is subject to this chapter.

Section 25. There is a new section to be numbered 50-480.2, R.C.M. 1947, which reads as follows:

**50-480.2. Imminent danger elimination.** If, upon an inspection of a mine the division finds that the conditions or practices in the mine are such that a danger exists which could reasonably be expected to cause

death or serious physical harm immediately or before the danger can be eliminated, the division shall determine the extent of the area of the mine throughout which the danger exists, and order the operator of the mine to have all persons (except the persons designated below, whose presence in the area is necessary to eliminate the danger described in the order) withdrawn from and excluded from entering the area:

(1) a person whose presence in the area is necessary in the judgment of the operator of the mine, to eliminate the danger;

(2) a public official whose official duties require him to enter the area;

(3) a legal or technical consultant, or a representative of the employees of the mine, who is a person qualified to make mine examinations, or is accompanied by such a person, and whose presence in the area is necessary in the judgment of the operator of the mine, for the proper investigation of the conditions in the area.

Section 26. There is a new section to be numbered 50-480.3, R.C.M. 1947, which reads as follows:

**50-480.3. Inspections — standards violated — abatement.** If, upon an inspection or investigation, the division finds that there has been a failure to comply with a mandatory standard which is applicable to the mine, but that the failure to comply has not created a danger that could reasonably be expected to cause death or serious physical harm in the mine immediately or before the imminence of the danger can be eliminated, it shall determine what would be a reasonable period of time within which the violation should be totally abated and issue a notice fixing a reasonable time for the abatement of the violation. If, upon the expiration of the period of time as originally fixed or extended, the division finds that the violation has not been totally abated, and if it also finds that the period of time should not be further extended, it shall also find the extent of the area which is affected by the violation. The division shall order the operator of the mine to have all persons in the area (excepting the following persons whose presence in the area is necessary to abate the violation described in the order) to be withdrawn from, and to be excluded from entering the area:

(1) a person whose presence in the area is necessary, in the judgment of the operator of the mine, to abate the violation;

(2) a public official whose official duties require him to enter the area;

(3) a legal or technical consultant, or a representative of the employees of the mine who is a person qualified to make examinations, or is accompanied by such a person, and whose presence in the area is necessary in the judgment of the operator of the mine, for the proper investigation of the conditions in the area.

Section 27. There is a new section to be numbered 50-480.4, R.C.M. 1947, which reads as follows:

**50-480.4. Findings and orders.** (1) Findings and orders issued under this chapter shall contain a detailed description of the conditions or practices which cause and constitute a situation of imminent danger or a viola-

tion of a mandatory standard, and a description of the area of the mine throughout which persons must be withdrawn and excluded.

(2) Each finding made and notice or order issued by the division shall be given promptly to the operator of the mine to which it pertains, and all the findings, orders, and notices shall be in writing, and shall be signed by the division inspector making them. A notice or order issued by the division under this chapter may be amended, canceled, or revised by the division.

Section 28. There is a new section to be numbered 50-480.5, R.C.M. 1947, which reads as follows:

**50-480.5. Order subject to review.** The order of the division shall remain in effect, but shall immediately be subject to review as provided in this chapter.

Section 29. There is a new section to be numbered 50-480.6, R.C.M. 1947, which reads as follows:

**50-480.6. Application for hearing.** An operator notified of an order made under section 50-480.2 may apply to the division for a hearing, revision, or amendment of the order. When the division after a hearing upon complaint, or upon its own motion, finds that danger throughout the area of the mine as set out in the order existed at the time of making the inspection, it shall make an order denying a revision, or amendment. However, if it finds that the danger did not exist throughout the area of the mine, it shall make an order consistent with its findings, revising, or amending the order under review.

Section 30. There is a new section to be numbered 50-480.7, R.C.M. 1947, which reads as follows:

**50-480.7. Order — no violation — abatement.** An operator notified of an order made under section 50-480.2 may apply to the division for a hearing or revision of the order. If the division finds that there was no violation, it shall make an order rescinding the order under review. If the division finds that there was a violation, but the violation has since been abated, it shall make an order rescinding the order under review. If the division finds that the violation was not totally abated, it shall make an order consistent with its findings.

Section 31. There is a new section to be numbered 50-480.8, R.C.M. 1947, which reads as follows:

**50-480.8. Expeditious hearing by division.** In view of the urgent need for prompt decisions of matters submitted to the division under this chapter, all actions which the division is required to take under this chapter shall be taken as rapidly as practicable, consistent with adequate consideration of the issues involved.

Section 32. There is a new section to be numbered 50-481, R.C.M. 1947, which reads as follows:

**50-481. Violation of the act — penalties.** (1) When an operator:

(a) violates or fails or refuses to comply with an order, rule, or standard adopted under this chapter, or

(b) interferes with, hinders, or delays the division or its authorized representatives in carrying out any duties under this chapter, or

(c) refuses to admit an authorized representative of the division to a mine which is subject to this chapter, or

(d) refuses to permit the inspection or investigation of a mine, or an accident, injury, or occupational disease occurring in or connected with a mine, or

(e) refuses to furnish the division any information or report requested by the division and which may reasonably be necessary to carry out the provisions of this chapter; a civil action for preventive relief, including, but not limited to, an application for a permanent or temporary injunction, restraining order, or other appropriate order, may be instituted by the division in the district court for the county in which the mine in question is located or in which the mine operator has its principal office.

(2) A person who knowingly:

(a) violates or fails or refuses to comply with an order, rule, or standard adopted under this chapter, or

(b) interferes with, hinders, or delays the division or its authorized representatives in carrying out any duties under this chapter, or

(c) refuses to admit an authorized representative of the division to a mine, or

(d) refuses to permit the inspection or investigation of a mine, or of an accident, injury, or occupational disease occurring in or connected with a mine, or

(e) refuses to furnish the division any information or report requested by the division and which may reasonably be necessary to carry out the provisions of this chapter; is guilty of a misdemeanor, and shall be punished for each offense by a fine of not less than one hundred dollars (\$100), or more than three thousand dollars (\$3,000), or by imprisonment in the county jail not exceeding six (6) months, or both. In an instance in which the offense is committed by a corporation, an officer or authorized representative of the corporation who knowingly permits the offense to be committed is subject to the same fine or imprisonment, or both.

Section 33. There is a new section to be numbered 50-482, R.C.M. 1947, which reads as follows:

**50-482. Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid parts remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 34. Repealer.** Sections 50-406, 50-410, 50-411, 50-412, 50-413, 50-414, 50-415, 50-416, 50-417, 50-418, 50-419, 50-420, 50-421, 50-422, 50-423, 50-424, 50-425, 50-426, 50-427, 50-435, 50-436, 50-437, 50-438, 50-439, 50-440, 50-441, 50-442, 50-443, 50-444, 50-445, 50-446, 50-447, 50-448, 50-449, 50-450, 50-451, 50-452, 50-453, 50-454, 50-455, 50-456,

50-457, 50-458, 50-459, 50-460, 50-461, 50-462, 50-463, 50-464, 50-465, 50-467, 50-469, 50-470, 50-471, 50-472, 50-473, 50-474, 50-475, 50-501, 50-502, 50-503, 50-504, 50-505, 50-506, 50-507, 50-508, 50-509, 50-511, 50-512, 50-513, 50-514, 50-515, 50-516, 50-517, 50-518, 50-519, 50-520, 50-521, 50-522, 50-523, 50-524, 50-525, 50-526, 50-527, 50-528, 50-529, 50-530, and 50-531, R.C.M. 1947, are repealed.

Section 35. **Effective date.** This act is effective January 1, 1975.

Approved March 21, 1974

## CHAPTER NO. 268

AN ACT AMENDING SECTIONS 70-803, 70-806, 70-807 AND 70-820, R.C.M. 1947, TO INCLUDE THE USE OF GEOTHERMAL OR OTHER UNDERGROUND RESOURCES WITHIN THE DEFINITION OF "UTILITY FACILITY"; AND TO INCLUDE ACTIVITIES RELATED TO THE POSSIBLE FUTURE DEVELOPMENT OF AN UNDERGROUND UTILITY FACILITY WITHIN THE MEANING OF "COMMENCE TO CONSTRUCT".

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 70-803, R.C.M. 1947, is amended to read as follows:

"70-803. **Definitions.** The following words, when used in this act, shall have the following meanings unless otherwise clearly apparent from the context:

(1) the word "department" means the department of natural resources and conservation.

(2) the word "board" means the board of natural resources and conservation.

(3) the words "utility facility" or "facility" mean:

(a) any energy-generating and conversion plant and associated facilities

(i) designed for, or capable of, generating at fifty (50) megawatts of electricity or more or any addition thereto (except pollution control facilities approved by the department of health and environmental sciences added to an existing plant) having an estimated cost in excess of two hundred fifty thousand dollars (\$250,000), or

(ii) designed for, or capable of, producing one hundred million (100,000,000) cubic feet of gas per day or more or any addition thereto having an estimated cost in excess of two hundred fifty thousand dollars (\$250,000), or

(iii) designed for, or capable of, producing fifty thousand (50,000) barrels of liquid hydrocarbon products per day or more or any addition thereto

having an estimated cost in excess of two hundred fifty thousand dollars (\$250,000), or

(iv) designed for or capable of enriching uranium minerals;

(b) an electric transmission line and associated facilities of a design capacity of thirty-four and one-half (34.5) kilovolts or more, except that the following transmission lines and associated facilities shall be subject to certain exceptions under the act:

(i) a transmission line and associated facilities with a design capacity of sixty-nine (69) kilovolts or less and which will be constructed above ground for a distance of ten (10) miles or less shall not be considered a utility facility within the definitions of this act,

(ii) a transmission line and associated facilities with a design capacity of one hundred sixty-one (161) kilovolts or less and which will be constructed underground for a distance of five (5) miles or less shall not be considered a utility facility within the definitions of this act,

(iii) a transmission line or associated facilities of a design capacity of one hundred sixty-one (161) kilovolts or less which does not meet the requirements of subsections (i) and (ii) of this subsection shall be subject to the specific time review requirements for transmission lines in section 6, subsection (1) [70-806(1)] and section 7, subsection (1) [70-807(1)] of this act if the proposed length of the transmission line will not exceed thirty (30) miles,

(iv) unless specifically covered by subsections (i), (ii) or (iii) of this subsection, the construction of all transmission lines and associated facilities shall be subject to the two (2) year time requirement of section 6, subsection (1) [70-806(1)], and the six hundred (600) day requirement of section 7, subsection (1) [70-807(1)],

(v) the provisions of subsections (i) and (ii) of this subsection shall not be construed as authorizing the simultaneous construction of two (2) or more transmission lines serving the same community or customer which would, when constructed separately, come within the exceptions of subsections (i) and (ii);

(c) a gas or liquid transmission line and associated facilities designed for, or capable of, transporting gas or liquid hydrocarbon products from a gasification or liquefaction facility of the size indicated in subsections (a) (ii) and (a) (iii) of this section.

*(d) any use of geothermal resources, including the use of underground space in existence or to be created, for the creation, use or conversion of energy.*

(4) the words "associated facilities" include, but are not limited to, transportation links of any kind, aqueducts, diversion dams and any other device or equipment associated with the production, or delivery of the energy form produced by a facility.

(5) the words "commence to construct" mean:

(a) any clearing of land, excavation, construction, or other action that

would affect the environment of the site or route of a utility facility, but do not include changes needed for temporary use of sites or routes for nonutility purposes, or uses in securing geological data, including necessary borings to ascertain foundation conditions.

*(b) the fracturing of underground formations by any means, if any such activity is related to the possible future development of an underground utility facility employing geothermal resources, but do not include the gathering of geological data by boring of test holes or other underground exploration, investigation, or experimentation.*

(6) the word "municipality" means any county or municipality within this state.

(7) the word "person" includes any individual, group, firm, partnership, corporation, cooperative, association, government subdivision, government agency, local government, or other organization.

(8) the words "public utility" or "utility" mean any person engaged in any aspect of the production, storage, sale, delivery or furnishing of heat, electricity, gas, or energy in any form for ultimate public use.

(9) "certificate" means the certificate of environmental compatibility and public need issued by the board and required for the construction or operation of any facility."

Section 2. Section 70-806, R.C.M. 1947, is amended to read as follows:

**"70-806. Application for certification — filing and contents — fees — use of filing fees — proof of service on municipalities — waiver of time requirement.** (1) At least two (2) years prior to anticipated commencement of construction of a utility facility as defined in sections 70-803(3)(a), 70-803(3)(b)(iv), 70-803(3)(c), and 70-803(3)(d) and at least nine (9) months prior to the anticipated commencement date of the construction of a utility facility as defined in section 70-803(3)(b)(iii), an applicant for a certificate shall file with the department an application, in such form as the department may prescribe, containing the following information:

(a) a description of the location and of the utility facility to be built thereon;

(b) a summary of any studies which have been made of the environmental impact of the facility;

(c) a statement explaining the need for the facility;

(d) a description of any reasonable alternate location or locations for the proposed facility, a description of the comparative merits and detriments of each location submitted, and a statement of the reasons why the primary proposed location is best suited for the facility; and

(e) such other information as the applicant may consider relevant or as the department may by regulation or order require. A copy or copies of the studies referred to in clause (b) above shall be filed with the department, if ordered, and shall be available for public inspection.



(2) A filing fee shall be deposited in the state general fund. Said fee shall be based upon the estimated cost of the facility according to the declining scale which follows. The applicant shall pay the accumulated sums calculated as follows: three percent (3%) of any estimated cost up to one million dollars (\$1,000,000); plus one percent (1%) of any estimated cost over a million dollars and up to twenty million dollars (\$20,000,000); plus one-half of one percent (0.5%) of any estimated cost over twenty million dollars (\$20,000,000) and up to one hundred million dollars (\$100,000,000); plus one-quarter of one percent (0.25%) of any amount of estimated cost over one hundred million (\$100,000,000) and up to three hundred million dollars (\$300,000,000); plus one-tenth of one percent (0.1%) of any amount of estimated cost over three hundred million dollars (\$300,000,000). It is the intent of the legislature that the revenues derived from the filing fee be used by the department in compiling the information required for rendering a decision on a certificate and for carrying out its other responsibilities under this act.

(3) Each application shall be accompanied by proof of service of a copy of such application on the chief executive officer of each municipality and the head of each government agency, charged with the duty of protecting the environment or of planning land use, in the area in which any portion of such facility is to be located, both as primarily and as alternatively proposed. The copy of such application shall be accompanied by a notice specifying the date on or about which the application is to be filed.

(4) Each application shall also be accompanied by proof that public notice thereof was given to persons, residing in the municipalities entitled to receive notice under subsection (3) of this section, by the publication of a summary of the application, and the date on or about which it is to be filed, in such newspapers as will serve substantially to inform such persons of the application.

(5) Inadvertent failure of service on, or notice to, any of the municipalities, government agencies or persons identified in subsections (3) and (4) of this section may be cured pursuant to orders of the department designed to afford them adequate notice to enable their effective participation in the proceeding. In addition, the department may, after filing, require the applicant to serve notice of the application or copies thereof or both upon such other persons, and file proof thereof, as the department may deem appropriate.

(6) An application for an amendment of a certificate shall be in such form and contain such information as the department shall prescribe. Notice of such an application shall be given as set forth in subsections (3) and (4) of this section.

(7) The board may waive compliance with the time limit of this section if an applicant makes a clear and convincing showing that an immediate need for a facility exists and that the applicant did not have knowledge that the need existed sufficiently in advance of the need to file an application within the time provided in subsection (1) of this section."

Section 3. Section 70-807, R.C.M. 1947, is amended to read as follows:

"70-807. Study, evaluation and report on proposed facility —

**application for amendment of certificate — hearings.** (1) Upon receipt of an application complying with section 70-806, the department shall commence an intensive study and evaluation of the proposed facility and its effects, pursuant to section 70-816 of this act. Within six hundred (600) days following receipt of the application for a facility as defined in sections 70-803(3)(a), 70-803(b)(iv), 70-803(3)(c), 70-803(3)(d) and within one hundred eighty (180) days for a facility as defined in sections 70-803(b)(iii) the department shall make a report to the board, which shall contain the department's studies, evaluations, recommendations, other pertinent documents resulting from its study and evaluation pursuant to section 70-816 of this act and the final environmental impact statement.

The departments of health and environmental sciences, highways, intergovernmental relations, fish and game, and public service regulation shall report to the department information relating to the impact of the proposed site on each department's area of expertise. Such information may include opinions as to the advisability of granting or denying the certificate. The department shall allocate funds obtained from filing fees to the departments making reports to reimburse them for the costs of compiling information and issuing the required report.

(2) On an application for an amendment of a certificate, the board shall hold a hearing in the same manner as a hearing is held on an application for a certificate if the proposed change in the facility would result in any material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of such facility other than as provided in the alternates set forth in the application.

(3) Upon receipt of the department's report submitted under subsection (1) of this section, the board shall set a hearing date not more than sixty (60) days after such receipt."

Section 4. Section 70-820, R.C.M. 1947, is amended to read as follows:

"70-820. **Adoption of rules—monitoring of facilities.** (1) The board and department may adopt rules implementing the provisions of this act.

(2) The board and the department shall have continuing authority and responsibility for monitoring the operations of all certificated facilities, for assuring continuing compliance with this act and certificates issued hereunder, and for discovering and preventing noncompliance with this act and such certificates.

(3) *The board shall adopt rules requiring every person who proposes to gather geological data by boring of test holes or other underground exploration, investigation, or experimentation, related to the possible future development of an underground utility facility employing geothermal resources, to comply with the following requirements:*

- (a) *Notify the department of the proposed action;*
- (b) *Submit to the department a description of the area involved;*
- (c) *Submit to the department a statement of the proposed activities to be conducted and the methods to be utilized;*

(d) *Submit to the department geological data reports at such times as may be required by the rules; and*

(e) *Submit such other information as the board may require in the rules."*

Approved March 21, 1974

## CHAPTER NO. 269

AN ACT AMENDING SECTIONS 92-413, 92-704.1, AND 92-708, R.C.M. 1947, RELATING TO THE DEFINITION OF BENEFICIARY, COMPENSATION FOR INJURY CAUSING DEATH, AND MANNER OF PAYMENT OF COMPENSATION, ALL UNDER THE WORKMEN'S COMPENSATION ACT, BY ADDING TO THE BENEFICIARY DEFINITION DEPENDENT PARENTS, BROTHERS AND SISTERS; PROVIDING CERTAIN DEATH BENEFITS TO DEPENDENT PARENTS, BROTHERS AND SISTERS; PROVIDING FOR EQUITABLE DISTRIBUTION TO DEPENDENT PARENTS, BROTHERS AND SISTERS; AND GRANTING A NONDEPENDENT PARENT AWARD OF THREE THOUSAND DOLLARS (\$3,000); AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 92-413, R.C.M. 1947, is amended to read as follows:

"92-413. **Beneficiary defined.** "Beneficiary" means: (1) a surviving wife or husband;

(2) an unmarried child under the age of eighteen (18) years;

(3) an unmarried child under the age of twenty-two (22) years who is a full-time student in an accredited school;

(4) an invalid child over the age of eighteen (18) years *who is dependent upon the decedent for support at the time of injury;*

(5) *a parent who is dependent upon the decedent for support at the time of the injury. However, such a parent is a beneficiary only when no beneficiary, as defined in subsections (1) through (4) of this section, exists; and*

(6) *a brother or sister under the age of eighteen (18) years if dependent upon the decedent for support at the time of the injury. However, such a brother or sister is a beneficiary only until the age of eighteen (18) years and only when no beneficiary, as defined in subsections (1) through (5) of this section, exists."*

Section 2. Section 92-704.1, R.C.M. 1947, is amended to read as follows:

"92-704.1. **Compensation for injury causing death.** (1) *To beneficiaries as defined in section 92-413, subsections (1) through (4), weekly*

compensation benefits for injury causing death shall be sixty-six and two-thirds percent (66  $\frac{2}{3}$ %) of the decedent's wages. The maximum weekly compensation benefits shall not exceed the state's average weekly wage. The minimum weekly compensation for death shall be fifty percent (50%) of the state's average weekly wage, but in no event shall it exceed the decedent's actual wages at the time of his death.

(2) *To beneficiaries as defined in section 92-413, subsections (5) and (6), weekly benefits shall be paid to the extent of the dependency at the time of the injury, subject to a maximum of sixty-six and two-thirds percent (66  $\frac{2}{3}$ %) of the decedent's wages. The maximum weekly compensation shall not exceed the state's average weekly wage.*

(3) *If the decedent leaves no beneficiary as defined in section 92-413, a lump sum payment of three thousand dollars (\$3,000) shall be paid to the decedent's surviving parent or parents.*

(4) Death benefits shall be paid to a widow or widower for life or until remarriage, and in the event of remarriage two (2) years' benefits shall be paid in a lump sum to the widow or widower. In all cases, benefits shall be paid to beneficiaries as defined in *section 92-413.*"

Section 3. Section 92-708, R.C.M. 1947, is amended to read as follows:

"92-708. **Compensation to run consecutively — manner of payment.** Compensation shall run consecutively and not concurrently and payment shall not be made for two (2) classes of disability over the same period. Compensation due to beneficiaries shall be paid to the surviving spouse, if any, or if none, then divided equally among or for the benefit of the children. In cases where beneficiaries are a surviving *spouse* and stepchildren of such *spouse* the compensation shall be divided equally among all beneficiaries. Compensation due to *beneficiaries as defined in section 92-413, subsections (5) and (6)* where there is more than one (1), shall be divided equitably among them and the question of dependency and amount thereof shall be a question of fact for determination by the division."

Section 4. This act shall be effective upon its passage and approval.

Approved March 21, 1974

## CHAPTER NO. 270

AN ACT TO AMEND SECTION 92-704.1, R.C.M. 1947, RELATING TO BENEFIT REDUCTIONS UNDER THE WORKMEN'S COMPENSATION ACT; AUTHORIZING THE DIVISION TO MAKE CERTAIN PAYMENTS; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 92-704.1, R.C.M. 1947, is amended to read as follows:

"92-704.1. **Compensation for injury causing death.** Weekly compensation benefits for injury causing death shall be sixty-six and two-thirds percent (66  $\frac{2}{3}$ %) of the decedent's wages. The maximum weekly compensation benefits shall not exceed the state's average weekly wage. The minimum weekly compensation for death shall be fifty percent (50%) of the state's average weekly wage, but in no event shall it exceed the decedent's actual wages at the time of his death.

Death benefits shall be paid to a widow or widower for life or until remarriage, and in the event of remarriage two (2) years' benefits shall be paid in a lump sum to the widow or widower. In all cases, benefits shall be paid to beneficiaries as defined in this act."

Section 2. There is a new section to be numbered 92-704.2, R.C.M. 1947, which reads as follows:

92-704.2. **Application of act.** The provisions of this act apply prospectively only. However, the division shall pay to any widow, widower or beneficiary who did or shall become eligible for compensation for injury causing death after June 30, 1973, and before July 1, 1974, such sum or sums necessary to bring the total amount of compensation paid or to be paid as long as such person has, or remains eligible for compensation, to the amount such person would have received without the reduction for benefits granted by the Social Security Act. The division shall pay such sums in a lump sum as to compensation periods past and bi-weekly as to compensation to become due and from a special fund appropriated for this purpose.

Section 3. This act is effective on its passage and approval.

Approved March 22, 1974

## CHAPTER NO. 271

AN ACT AMENDING THE FLOODWAY MANAGEMENT AND REGULATION ACT, SECTION 89-3501 ET SEQ., R.C.M. 1947, TO PROVIDE FOR THE DESIGNATION OF FLOODPLAINS AND FLOODWAYS; TO SHORTEN TO SIX MONTHS THE TIME WITHIN WHICH A POLITICAL SUBDIVISION MAY ADOPT LAND-USE REGULATIONS; TO EMPOWER THE BOARD OF NATURAL RESOURCES AND CONSERVATION TO SHORTEN UPON NOTICE THE SIX-MONTH TIME PERIOD WHEN NECESSARY TO COMPLY WITH FEDERAL FLOOD INSURANCE REGULATIONS; AND TO ALLOW LOCAL POLITICAL SUBDIVISIONS TO ADOPT EXCLUSIVE FLOODPLAIN AND FLOODWAY LAND-USE REGULATION AND PERMIT SYSTEMS; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 89-3502, R.C.M. 1947, is amended to read as follows:

"89-3502. **Policy and purposes.** The policy and purposes of this act are to guide development of the floodway areas of this state consistent with the enumerated findings; to recognize the right and need of watercourses to periodically carry more than the normal flow of water; to provide state co-ordination and technical assistance to local units in management of floodway areas; to co-ordinate federal, state and local management activities for floodway areas; to encourage local governmental units to manage flood-prone lands including the adoption, enforcement and administration of land-use regulations and to provide the Montana water resources board with authority necessary to carry out a comprehensive floodway management program for the state.

Specifically, it is the purpose of this act to:

- (1) restrict or prohibit uses which are dangerous to health, safety of property in times of flood or cause increased flood heights or velocities;
- (2) require that uses vulnerable to floods, including public facilities which serve such uses, be provided with flood protection at the time of initial construction;
- (3) develop and provide information to identify lands which are unsuited for certain development purposes because of flood hazard;
- (4) *distinguish between the land-use regulations applied to the designated floodway and those applied to that portion of the designated floodplain not contained within the designated floodway;*
- (5) *apply more restrictive land-use regulations within the designated floodway;*
- (6) *ensure that regulations and minimum standards adopted under this act, insofar as possible, balance the greatest public good with the least private injury."*

Section 2. Section 89-3503, R.C.M. 1947, is amended to read as follows:

"89-3503. **Definitions.** As used in this act, unless the context otherwise requires:

- (1) "A flood of one hundred (100) year frequency" means a flood magnitude expected to recur on the average of once every one hundred (100) years, or a flood magnitude which has a one percent (1%) chance of occurring in any given year;
- (2) "Channel" shall mean the geographical area within either the natural or artificial banks of a watercourse or drainway;
- (3) "Board" shall mean the board of *natural resources and conservation*;
- (4) "Department" means the department of natural resources and conservation provided for in title 82A, chapter 15;
- (5) "Designated floodway" shall mean a floodway whose limits have been designated and established by order of the board.

(6) *"Designated floodplain" means a floodplain whose limits have been designated and established by order of the board;*

(7) *"Drainway" shall mean any depression two (2) feet or more below the surrounding land serving to give direction to a current of water less than nine (9) months of the year, having a bed and well-defined banks; provided, that in the event of doubt as to whether a depression is a watercourse or drainway, it shall be presumed to be a watercourse;*

(8) *"Flood" shall mean the water of any watercourse or drainway which is above the bank or outside the channel and banks of such watercourse or drainway;*

(9) *"Floodway" shall mean the channel of a watercourse or drainway and those portions of the floodplain adjoining the channel which are reasonably required to carry and discharge the flood water of any watercourse or drainway;*

(10) *"Floodplain" shall mean the area adjoining the watercourse or drainway which would be covered by the flood water of a flood of one hundred (100) year frequency;*

(11) *"Establish" shall mean construct, place, insert, or excavate;*

(12) *"Natural obstruction" shall mean any rock, tree, gravel, or analogous natural matter that is an obstruction and has been located within the floodplain or floodway by a nonhuman cause;*

(13) *"Artificial obstruction" shall mean any obstruction which is not a natural obstruction and includes any dam, wall, riprap, embankment, levee, dike, pile, abutment, projection, revetment, excavation, channel rectification, bridge, conduit, culvert, building, refuse, automobile body, fill, or other analogous structure or matter in, along, across, or projecting into any floodplain or floodway which may impede, retard or change the direction of the flow of water, either in itself or by catching or collecting debris carried by such water, or that is placed where the natural flow of the water would carry the same downstream to the damage or detriment of either life or property;*

(14) *"Owner" shall mean any person who has dominion over, control of, or title to an obstruction;*

(15) *"Political subdivision" shall mean any incorporated city or town or any county organized and having authority to adopt and enforce land-use regulations; and*

(16) *"Responsible political subdivision" means a political subdivision that has enacted land-use regulations in accordance with this act.*

(17) *"Watercourse" shall mean any depression two (2) feet or more below the surrounding land serving to give direction to a current of water at least nine (9) months of the year, having a bed and well-defined banks; provided, that it shall, upon order of the board, also include any particular depression which would not otherwise be within the definition of watercourse."*

Section 3. Section 89-3504, R.C.M. 1947, is amended to read as follows:

**"89-3504. Program for delineation of floodways — floodway-encroachment lines — land-use regulations.** (1)(a) The board shall initiate a comprehensive program for the delineation of designated *floodplains and designated floodways* for every watercourse and drainway in the state. It shall make a study relating to the acquiring of flood data, and have authority to enter into arrangements with the United States geological survey, the United States army corps of engineers or any other state or federal agency for such acquisition.

(b) *Before the board establishes by order a designated floodplain or a designated floodway, the department shall consult with the affected political subdivisions. Consultation shall include, but not be limited to, the following:*

(i) *specifically requesting that the political subdivisions submit pertinent data concerning flood hazards, including flooding experiences, plans to avoid potential hazards, estimates of economic impacts of flooding on the community, both historical and prospective, and such other data as considered appropriate;*

(ii) *notifying local officials, including members of the county commission, city council and planning board, of the progress of surveys, studies and investigations and of proposed findings, along with information concerning data and methods employed in reaching such conclusions; and*

(iii) *encouraging local dissemination of information concerning surveys, studies and investigations, so that interested persons will have an opportunity to bring relevant data to the attention of the department.*

(2) When sufficient data have been acquired, the board shall establish, by order, after a public hearing, *the designated floodplain* within which a political subdivision may establish land-use regulation. *When sufficient data have been acquired, the board shall establish, by order, after a public hearing, the designated floodway within which a political subdivision may establish land-use regulation. These designations shall be based upon reasonable hydrological certainty. When the designated floodplain or the designated floodway has been established, the board shall furnish such data to officials of the political subdivision having jurisdiction over such areas together with a map outlining the areas involved, a copy of this act, adopted rules and regulations of the board, and suggested minimum standards. These standards, rules and regulations shall reflect gradations in flood hazard based on criteria as outlined in subsection (2) of section 89-3507 of this act. In adopting these standards, rules, and regulations, the board shall consider local input from the affected political subdivisions.* The board shall record all *designated floodplains or designated floodways* established by it in the office of the county clerk and recorder of each county in which such *floodplains or floodways* are found. The board shall have the power to alter such *floodplains or floodways* at any later time, by order, after a public hearing if a re-evaluation of the then available flood data warrants it. Notice of any such hearing or order of the board establishing or altering any such *floodplains or floodways* shall be given by publishing such notice once each week for three consecutive weeks in a legal newspaper published or of general circulation in the area involved, the last publication of which shall be not less than ten (10) days prior to the date set for the hearing or the effective date of such order.



(3) *Upon transmittal of the floodplain information to officials of a political subdivision, the political subdivision has six (6) months from the date of transmittal to adopt land-use regulations which meet or exceed the minimum standards of the board. If within the six (6) month period the political subdivision has failed to adopt the land-use regulations, the department shall enforce the minimum standards within the designated floodplain or the designated floodway as established by the board under subsection (2) of this section, and no artificial obstruction or nonconforming use shall be established by any person within the designated floodplain or the designated floodway, unless specifically authorized by the board. When necessary for compliance with federal flood insurance requirements, the board may shorten the six (6) month period upon notification to the political subdivision and publication of a notice thereof in a newspaper of general circulation in the affected area once a week for three (3) consecutive weeks.*

Section 4. Section 89-3505, R.C.M. 1947, is amended to read as follows:

**"89-3505. Artificial obstructions and nonconforming uses as nuisances.** Any artificial obstruction or nonconforming use in any *designated floodplain* or designated floodway enforced under section 89-3504, subsections (3) or (4) and not exempt under section 89-3506 of this act is hereby declared to be a public nuisance unless a permit has been obtained for such artificial obstruction or nonconforming use from the *department or the responsible political subdivision.*"

Section 5. Section 89-3506, R.C.M. 1947, is amended to read as follows:

**"89-3506. Establishment of artificial obstructions or nonconforming uses unlawful — permitted open space uses — prohibited nonconforming uses.** (1) It shall be unlawful for a person to establish any artificial obstruction or nonconforming use within a *designated floodplain* or a *designated floodway*, without a permit from the *department or the responsible political subdivision*. This act shall not affect any existing artificial obstruction or nonconforming use established in the *designated floodplain* or *designated floodway* prior to the effective date of this act and before the board has enforced a *designated floodplain* or a *designated floodway* under section 89-3504, subsections (3) or (4); provided, that no person shall make nor shall any owner allow alterations of any artificial obstruction or *nonconforming use* within a *designated floodplain* or a *designated floodway* whether the obstruction proposed for alteration was located in the *floodplain* or floodway before or after the effective date of this act except upon express written approval of the *department or the responsible political subdivision*. Maintenance of an obstruction shall not be construed to be an alteration.

(2) The following open space uses shall be permitted within the designated floodway, to the extent that they are not prohibited by any other ordinance or statute, and provided they do not require structures other than portable structures, fill, or permanent storage of materials or equipment; (a) agricultural uses (b) industrial-commercial uses such as loading areas, parking areas, emergency landing strips (c) private and public

recreational uses such as golf courses, tennis courts, driving ranges, archery ranges, picnic grounds, boat launching ramps, swimming areas, parks, wildlife management and natural areas, game farms, fish hatcheries, shooting preserves, target ranges, trap and skeet ranges, hunting and fishing areas, hiking and horseback riding trails (d) forestry, including processing of forest products with portable equipment (e) residential uses such as lawns, gardens, parking areas and play areas (f) excavations subject to the issuance of a permit under section 89-3507.

*(3) Permits shall be granted for the following uses within that portion of the floodplain not contained within the designated floodway, to the extent that they are not prohibited by any other ordinance, regulation or statute:*

*(a) any use permitted in the designated floodway;*

*(b) structures, including, but not limited to, residential, commercial, and industrial structures, provided that:*

*(i) such structures meet the minimum standards adopted by the board;*

*(ii) residential structures are constructed on fill such that the lowest floor elevation (including basements) is two (2) feet above the one hundred (100)-year flood elevation;*

*(iii) commercial and industrial structures are either constructed on fill as specified in subparagraph (ii) above, or are adequately floodproofed up to an elevation no lower than two (2) feet above the one hundred (100)-year flood elevation. Such floodproofing shall be in accordance with the minimum standards adopted by the board.*

(4) The following nonconforming uses shall be prohibited within the designated floodway: (a) Any building for living purposes or place of assembly or permanent use by human beings (b) any structure or excavation that will cause water to be diverted from the established floodway, cause erosion, obstruct the natural flow of water, or reduce the carrying capacity of the floodway (c) the construction or permanent storage of any object subject to flotation or movement during flood level periods."

Section 6. Section 89-3507, R.C.M. 1947, is amended to read as follows:

**"89-3507. Permits for obstructions — application — factors considered — fees.** (1) *The department or the responsible political subdivision shall have the power to issue permits for the establishment or alteration of artificial obstructions and nonconforming uses which would otherwise violate section 89-3506 of this act. The application for the permit shall contain such information as the department or the responsible political subdivision shall require, including complete maps, plans, profiles and specifications of the obstruction or use and watercourse or drainway.*

(2) *In passing upon such application, the department or the responsible political subdivision shall consider in accordance with the minimum standards established by the board (a) the danger to life and property by water which may be backed up or diverted by such obstruction or use, (b) the*

danger that the obstruction *or use* will be swept downstream to the injury of others, (c) the availability of alternate locations, (d) the construction or alteration of the obstruction *or use* in such a manner as to lessen the danger, (e) the permanence of the obstruction *or use*, (f) the anticipated development in the foreseeable future of the area which may be affected by the obstruction *or use*, and (g) such other factors as are in harmony with the purpose of this act. The *department or the responsible political subdivision* may make a part of such permit any reasonable conditions it may deem advisable. In order for the permit to continue to remain in force, the obstruction *or use* must be maintained so as to comply with the conditions and specifications of the permit.

(3) Permits for obstructions *or uses* to be established in the *designated floodplain or designated floodway* of watercourses must be specifically approved or denied within a reasonable time by the *department or the responsible political subdivision*; permits for obstructions *or uses* in the *designated floodplains or designated floodways* shall be conclusively deemed to have been granted sixty (60) days after the receipt of such application by the *department or the responsible political subdivision*, or after such time as the board *or the responsible political subdivision* shall specify, unless the *department or the responsible political subdivision* notifies the applicant that the permit is denied. *The responsible political subdivision shall send to the department a copy of each permit granted pursuant to this section.*

(4) Every application for a permit shall be accompanied by a nonrefundable application fee of ten dollars (\$10) which the state treasurer shall credit to the floodway obstruction removal fund."

Section 7. Section 89-3508, R.C.M. 1947, is amended to read as follows:

"89-3508. **Powers and duties of board relative to obstructions.** The powers and duties of the board relative to obstructions in a board floodway shall include the following:

(1) Where an obstruction to a *designated floodway* established under section 89-3504, subsections (2) or (4) has been created by fallen trees, silt, debris, wreckage, unanchored automobile bodies, and like matter, the board may, in its discretion, remove the obstruction, in which case the cost of removal shall be borne by the board; and

(2) Where, after investigation, notice, and hearing, an order has been issued to the owner of an obstruction not exempt under the provisions of section 89-3506 of this act for its removal or repair, and the order is not complied with within such reasonable time as may be prescribed, or if the owner cannot be found or determined, the board may make or cause such removal or repairs to be made, the cost of which shall be borne by the owner and shall be recoverable in the same manner as debts are now recoverable by law."

Section 8. Section 89-3509, R.C.M. 1947, is amended to read as follows:

"89-3509. **Authority to enter and investigate lands or waters.** The

board, or the responsible political subdivision, or agents, surveyors, or other employees thereof, may make reasonable entry upon any lands and waters in the state for the purpose of making any investigation, survey, removal, or repair contemplated by this act. An investigation of any natural or artificial obstruction or *nonconforming use* shall be made by the board either on its own initiative, on the written request of any three (3) titleholders of land abutting the watercourse or drainway involved, or on the written request of any political subdivision."

Section 9. Section 89-3510, R.C.M. 1947, is amended to read as follows:

"89-3510. **Obstructions exempt where drainage area is small.** This act shall not extend to any obstruction in the *floodplain* or floodway of a watercourse or drainway where the drainage area above the same, either within or without the state, is less than twenty-five (25) square miles in extent, unless a particular watercourse or drainway is expressly declared to be within the coverage of this act by order of the board."

Section 10. Section 89-3511, R.C.M. 1947, is amended to read as follows:

"89-3511. **Orders and rules — judicial remedy.** The board may issue such orders and rules as are necessary to implement the provisions of this act. If an order is issued to the owner of an artificial obstruction or *nonconforming use* not exempt under the provisions of section 89-3506 of this act for its removal or repair, such order shall not become effective less than (10) days after a hearing is held relating to such order. In addition to any requirement imposed by subsection (2) of section 89-3504 of this act, where any order is issued which affects with particularity the land adjacent to any watercourse or drainway, notice of the contents of such order and of any required hearing shall be mailed by the board to the titleholder of such land not less than ten (10) days before the effective date of such order, or, if there is a required hearing, to the titleholder of such land and to the owner of the *artificial* obstruction or *nonconforming use* not less than ten (10) days before the date of such hearing; provided, that such notice need not be given to the owner of the *artificial* obstruction or *nonconforming use* for an order issued pursuant to subsection (2) of section 89-3508 of this act if the owner cannot be found or determined. All orders and rules issued by the board shall be on file at the offices of the board and in the office of the county clerk of each county affected by such order or rule. Any person aggrieved by any order of the board issued under this act may appeal from such order to a court of competent jurisdiction within thirty (30) days after its effective date. In the event such an appeal is taken, enforcement of such order shall be stayed pending the outcome of such appeal. Service of notice of the appeal shall be made upon the director of the board."

Section 11. Section 89-3514, R.C.M. 1947, is amended to read as follows:

"89-3514. **Permit construed as added requirement—exception—immunity.** (1) The granting of a permit under the provisions of this act shall in no way affect any other type of approval required by any

other statute or ordinance of the state, of any political subdivision or of the United States, but shall be construed as an added requirement; provided, that if a political subdivision enacts *in harmony with the purposes of this act permit issuance ordinances, regulations or resolutions and land-use ordinances, regulations or resolutions which meet or exceed the minimum standards of the board, and if the administrative and enforcement procedures established for those ordinances, regulations, or resolutions are found acceptable by the board, no permit from the department is required; however, if the board determines that there is a failure by a political subdivision to comply with the intent, purposes and provisions of this act and the minimum standards adopted thereunder, the powers of the political subdivision may be suspended after hearing, and the minimum standards adopted by the board shall be enforced by the department until such time as the board determines that the political subdivision will comply.* The grant or denial of a permit shall not have any effect on any remedy of any person at law or in equity; provided, that where it is shown that there is a wrongful failure to comply with this act, there shall be a rebuttable presumption that the obstruction was the proximate cause of the flooding of the land of any person bringing suit.

(2) No action for damages sustained because of injury caused by an obstruction for which a permit has been granted under this act shall be brought against the state, the board, a member of the board, or its employees or agents. No provision of this act shall be construed as interfering in any way with the right of the United States to regulate interstate commerce or the navigable waters of the United States."

Section 12. This act is effective on its passage and approval.

Approved March 21, 1974

## CHAPTER NO. 272

AN ACT AMENDING SECTIONS 92-702.1, AND 92-704.1, R.C.M. 1947, RELATING TO THE PAYMENT OF WORKMEN'S COMPENSATION BENEFITS FOR TOTAL PERMANENT DISABILITY, AND DEATH, BY ADJUSTING PROVISIONS ALLOWING WORKMEN'S COMPENSATION INSURERS TO REDUCE WORKMEN'S COMPENSATION PAYMENTS BY THE AMOUNT OF FEDERAL PERIODIC BENEFITS PAID TO A CLAIMANT.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 92-702.1, R.C.M. 1947, is amended to read as follows:

"92-702.1. **Compensation for injuries producing total permanent disability.** Weekly compensation benefits for injury producing total permanent disability shall be sixty-six and two-thirds percent (66  $\frac{2}{3}$ %) of the wages received at the time of the injury. The maximum weekly

compensation benefits shall not exceed the state's average weekly wage. Total permanent disability benefits shall be paid for the duration of the worker's total permanent disability.

In cases where it is determined that periodic benefits granted by the Social Security Act, 42 U.S.C. 301 (1935), are payable because of the injury, the weekly benefits payable under this section are reduced, but not below zero (0), by an amount equal, as nearly as practical, to one-half ( $\frac{1}{2}$ ) the federal periodic benefits for such week.

Section 2. Section 92-704.1, R.C.M. 1947, is amended to read as follows:

**"92-704.1. Compensation for injury causing death.** Weekly compensation benefits for injury causing death shall be sixty-six and two-thirds percent ( $66\frac{2}{3}\%$ ) of the decedent's wages. The maximum weekly compensation benefits shall not exceed the state's average weekly wage. The minimum weekly compensation for death shall be fifty percent (50%) of the state's average weekly wage, but in no event shall it exceed the decedent's actual wages at the time of his death.

Death benefits shall be paid to a widow or widower for life or until remarriage, and in the event of remarriage two (2) years' benefits shall be paid in a lump sum to the widow or widower. In all cases, benefits shall be paid to beneficiaries as defined in this act."

Approved March 22, 1974

## CHAPTER NO. 273

### AN ACT TO AMEND SECTION 32-21-105.1, R.C.M. 1947, PROVIDING A PENALTY CLAUSE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 32-21-105.1, R.C.M. 1947, is amended to read as follows:

**"32-21-105.1. Headgear required for motorcycle riders—noise suppression devices.** (1) The operator and passenger, if any, of any motorcycle operated upon the streets or highways of this state shall wear protective headgear upon the head. Such headgear shall meet standards established by the department of justice.

(2) All motorcycles operated on the streets and highways of this state shall be equipped at all times with noise suppression devices, including an exhaust muffler, in good working order, and in constant operation.

(3) *A person convicted of the violation of subsection (1), above, shall be fined five dollars (\$5).*

(4) *A person convicted of the violation of subsection (2), above, shall*

*be punished by a fine of not less than ten dollars (\$10) nor more than one hundred dollars (\$100) or by imprisonment for not more than ten (10) days or by both such fine and imprisonment for the first such conviction; for a second conviction within one (1) year thereafter such person shall be punished by a fine of not less than twenty-five dollars (\$25) nor more than two hundred dollars (\$200) or by imprisonment for not more than twenty (20) days or by both such fine and imprisonment; upon a third or subsequent conviction within one (1) year after the first conviction such person shall be punished by a fine of not less than fifty dollars (\$50) nor more than five hundred dollars (\$500) or by imprisonment for not more than six (6) months or by both such fine and imprisonment."*

Approved March 25, 1974

## CHAPTER NO. 274

AN ACT DEFINING SHOPLIFTING AS THEFT; AMENDING SECTIONS 95-611 AND 11-1602, R.C.M. 1947, EXPANDING A CITIZEN'S RIGHT TO DETAIN AND ARREST OFFENDERS AND LIMITING CIVIL ACTIONS BASED ON SUCH DETENTIONS AND ARRESTS.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is a new section to be numbered 95-611.1, R.C.M. 1947, which reads as follows:

95-611.1. **Definitions.** As used in this act:

(1) "Concealment" means any act or deception done purposely or knowingly upon or outside the premises of a wholesale or retail store or other mercantile establishment with the intent to deprive the merchant of all or part of the value of the merchandise. The following acts or deceptive conduct shall be prima facie evidence of concealment: concealing merchandise upon the person, or in a container, or otherwise removing such merchandise from full view while upon the premises; or removing, changing, or altering any price tag; or transferring or moving any merchandise upon the premises to obtain a lower price than the merchandise was offered for sale by the merchant; or abandoning or disposing of any merchandise in such a manner that the merchant will be deprived of all or part of the value of the merchandise.

(2) "Shoplifting" means the theft of any goods offered for sale by a wholesale or retail store or other mercantile establishment.

Section 2. There is a new section to be numbered 95-611.2, R.C.M. 1947, which reads as follows:

95-611.2. **Concealment not proof of theft.** Concealment of merchandise shall not constitute proof of the commission of the offense of theft.

Section 3. Section 95-611, R.C.M. 1947, is amended to read as follows:

"95-611. **Arrest by a private person.** A private person may arrest another when:

(1) *he believes, on reasonable grounds, that an offense is being committed or attempted in his presence;*

(2) *a felony has in fact been committed and he believes, on reasonable grounds, that the person arrested has committed it; or*

(3) *he is a merchant, as defined in section 64-212, and has probable cause to believe the other is shoplifting in the merchant's store. Such merchant may stop and temporarily detain the suspected shoplifter; the merchant in such event:*

*(a) shall promptly inform the person that the stop is for investigation of shoplifting, and that upon completion of the investigation the person will be released or turned over to the custody of a peace officer;*

*(b) may demand of the person his name and his present or last address and may question the person in a reasonable manner for the purpose of ascertaining whether or not such person is guilty of shoplifting;*

*(c) may take into possession any merchandise for which the purchase price has not been paid and which is in the possession of the person or has been concealed from full view; and*

*(d) may place the person under arrest or request the person to remain on the premises until a peace officer arrives.*

*Any stop, detention, questioning or recovery of merchandise under this subsection shall be done in a reasonable manner and time. Unless evidence of concealment is obvious and apparent to the merchant this section shall not authorize a search of the detained person other than a search of his coat or other outer garments and any package, brief case or other container unless the search is done by a peace officer under proper legal authority. After the purpose of a stop has been accomplished or thirty (30) minutes have elapsed, whichever occurs first, the merchant shall allow the person to go unless the person is arrested and turned over to the custody of a police officer.*

*(4) Such stop and temporary detention, with or without questioning or removal of merchandise, when done by a merchant in compliance with the law, shall not constitute an unlawful arrest or search. A merchant stopping, detaining, or arresting a person on the belief that such person is shoplifting, is not liable for damages to such person unless the merchant acts with malice either actual or implied or contrary to the provisions of this law."*

Section 4. Section 11-1602, R.C.M. 1947, is amended to read as follows:

"11-1602. **Jurisdiction of police courts.** The police court has concurrent jurisdiction with the justice of the peace of the following public offenses committed within the county:

(1) *Theft where the value of the stolen property does not exceed one hundred fifty dollars (\$150).*



(2) Assault and battery, not charged to have been committed upon a public officer in the discharge of his official duty, or with intent to kill.

(3) Breaches of the peace, riots, affrays, committing willful injury to property, and all misdemeanors punishable by fine not exceeding five hundred dollars (\$500), or by imprisonment not exceeding six (6) months, or by both fine and imprisonment.

(4) Proceedings respecting vagrants, lewd, or disorderly persons. Such offenses must be prosecuted in the name of the state of Montana.

(5) Possession of beer or liquor by persons under the age of eighteen (18) years in violation of section 94-35-106.2.

(6) Selling, giving away or disposing of intoxicating liquor to minors in violation of section 94-35-106.

The police court shall have no jurisdiction of any civil cause, except as *otherwise provided by law.*"

Section 5. There is a new section to be numbered 11-990, R.C.M. 1947, which reads as follows:

11-990. **Shoplifting.** The city or town council has power to define shoplifting as theft in conformance with law, and to punish persons found guilty thereof.

Section 6. **Severability.** It is the intent of the legislature that if a part of this act is invalid, all valid parts that are severable from the invalid part remains in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from its invalid applications.

Approved March 25, 1974

## CHAPTER NO. 275

AN ACT REQUIRING THAT ANY LAW REQUIRING LOCAL GOVERNMENT TO ADMINISTER ANY PROGRAM OR PROVIDE ANY SERVICE INCLUDE A METHOD OF FINANCING SUCH PROGRAM OR SERVICE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is a new section to be numbered 43-517, R.C.M. 1947, which reads as follows:

43-517. **Financing new local government duties.** Any law enacted by the legislature after July 1, 1974, which requires a local government unit to perform an activity or provide a service or facility which will require the direct expenditure of additional funds must provide a means to finance the activity, service or facility. The means of financing such activity may be through a general, all-purpose or special levy or through

remission of funds by the state of Montana to said local government unit, provided, however, that any requirement in such law that financing be made from the local government unit's levy authority must also provide authority therein to increase said levy by an amount necessary to finance said program, and provided further, that if financing is provided by remission of funds by the state of Montana, such remission shall bear a reasonable relationship to the actual cost of performing the activity or providing the service or facility. The local government unit may refuse to administer or enforce any law which does not comply with the requirements of this section if that law requires an expenditure that would require the local government unit to exceed its statutory levy authority. No subsequent legislation shall be deemed to supersede or modify any provision of this act, whether by implication or otherwise, except to the extent that such legislation shall do so expressly.

Section 2. There is a new section to be numbered 43-518, R.C.M. 1947, which reads as follows:

**43-518. Not applicable to certain legislation.** This act shall not apply to any law under which the required expenditure of additional local funds is incidental to the main purpose of the law.

Approved March 25, 1974

## CHAPTER NO. 276

AN ACT AMENDING SECTIONS 16-2413, 93-401, AND 93-402, R.C.M. 1947, TO AUTHORIZE THE BOARD OF COUNTY COMMISSIONERS IN EVERY COUNTY TO CONSTITUTE ONE ADDITIONAL JUSTICE COURT AS THE BOARD OF COUNTY COMMISSIONERS DEEMS NECESSARY AND TO PROVIDE FOR THE LOCATION OF THE JUSTICE COURTS; AND TO PROVIDE FOR AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 93-401, R.C.M. 1947, is amended to read as follows:

**"93-401. Justices' courts and justices of the peace.** (1) There must be at least one (1) justice court in each county of the state. *The board of county commissioners of each county of the state shall have authority to constitute one (1) additional justice court in their respective counties as the board deems necessary. One (1) justice court in each county must be located at the county seat and the board of county commissioners shall determine the location of the other justice court in their respective counties. Each justice of the peace must be elected by the qualified electors of the county at the general state election next preceding the expiration of the term of office of his predecessor.*

(2) A justice of the peace shall be nominated and elected on the non-partisan judicial ballot in the same manner as are judges of the district court. Each judicial office shall be a separate and independent office for

election purposes and each office shall be numbered by the county commissioners and each candidate for justice of the peace shall specify the number of the office for which he seeks to be elected. A candidate may not file for more than one (1) office. Section 23-4511 prohibiting political party endorsement for judicial officers shall also apply to justices of the peace.

(3) Each justice of the peace, elected or appointed, after he has received his certificate of election or appointment, shall, before entering upon the duties of his office take the constitutional oath of office, which must be filed with the county clerk.

(4) Before the county clerk may file the oath the elected or appointed justice must satisfy the clerk that he is either:

(a) an attorney at law authorized to practice law in the state of Montana, or

(b) a person who has held the office of justice of the peace within the preceding five (5) years, or

(c) a person who has completed the orientation course of study held under the direction of the Montana Magistrates Association of the state of Montana; or if a person is appointed after the course is offered he must agree to take the course at the next offering and failure to do so will disqualify him.

(5) The Montana Magistrates Association shall present a course of study within four (4) weeks following each general election. Mileage and per diem shall be paid the elected or appointed justice of the peace for attending the course and shall be a proper charge against the county wherein the justice of the peace will hold court."

Section 2. Section 16-2413, R.C.M. 1947, is amended to read as follows:

"16-2413. **Keep office at county seat.** All county officers *except justices of the peace as set forth in 93-401* must keep their offices at the county seat."

Section 3. Section 93-402, R.C.M. 1947, is amended to read as follows:

"93-402. **Courts — when open for business.** A justice's court is always open for the transaction of business, except on legal holidays and non-judicial days."

Section 4. This act is effective on its passage and approval.

Approved March 25, 1974

## CHAPTER NO. 277

AN ACT AMENDING SECTIONS 84-709 AND 84-709.1, R.C.M. 1947, CLARIFYING THE POWERS OF THE STATE TAX APPEALS BOARD AND THE PROCEDURES INVOLVED IN APPEALS BEFORE THE STATE TAX APPEALS BOARD.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 84-709, R.C.M. 1947, is amended to read as follows:

**"84-709. Appeal to state tax appeal board — hearing.** Any person, firm or corporation or the department of revenue in behalf of the state, or any municipal corporation, aggrieved by the action of any county tax appeal board, may appeal to the state board by filing with the county tax appeal board a notice of appeal, and a duplicate thereof with the state board, within ten days after the action of the county board, which notice shall specify the action complained of and the reasons assigned for such complaint. The state board shall set such appeal for hearing either in its office in the capitol or such county seat as the board shall deem advisable to facilitate the performance of its duties or to accommodate parties in interest, and shall give to the appellant and to the county board at least five days' notice of the time and place of such hearing; at the time of giving such notice the state board may require the county board to certify to it the minutes of the proceedings resulting in such action and all testimony taken in connection therewith, and the state board may, in its discretion, determine the appeal on such record *if all parties receive a copy of the transcript and are permitted to submit additional sworn statements*, or may hear further testimony. For the purpose of expediting its work the state board may refer any such appeal to one of its members and the person so designated shall have and exercise all the powers of the board in conducting such hearings, and shall, as soon as possible thereafter, report the proceedings, together with a transcript of the testimony received, to the board and the state board shall determine such appeal on the record so made. On all hearings at county seats throughout the state, the state board or the member designated to conduct a hearing may employ the local court reporter or other competent stenographer to take and transcribe the testimony received, and the cost thereof may be paid out of the general appropriation for the board. *In connection with any appeal the state board shall have the authority to affirm, reverse, or modify any decision appealable to the state tax appeal board; the decision of the state tax appeal board shall be final and binding upon all interested parties unless reversed or modified by judicial review. To the extent this section is in conflict with the Montana Administrative Procedure Act, this section shall supersede the Montana Administrative Procedure Act. The state tax appeal board shall not have authority to amend or repeal any administrative rule or regulation. The state tax appeal board must give an administrative rule or regulation full effect unless the board finds any such rule or regulation arbitrary, capricious or otherwise unlawful.*"

Section 2. Section 84-709.1, R.C.M. 1947, is amended to read as follows:

**"84-709.1. Judicial review of contested cases.** (1) Any party to an appeal before the state tax appeal board who is aggrieved by a final decision in a contested case is entitled to judicial review under this act.

(2) Proceedings for review shall be instituted by filing a petition in district court, *and serving a copy thereof on the state tax appeal board*, within thirty (30) days after service of the final decision of the state tax appeal board, or if a rehearing is requested within thirty (30) days after the decision thereon. *All parties to the appeal shall cause to be served on the state tax appeal board a copy of all pleadings and documents they shall file in such proceeding.*"

Approved March 25, 1974

**CHAPTER NO. 278**

AN ACT TO AMEND SECTION 32-4102, R.C.M. 1947, TO ALLOW THE STATE HIGHWAY COMMISSION TO WAIVE THE PROVISIONS OF SECTIONS 84-3507 AND 82-1927, R.C.M. 1947, RELATING TO PUBLIC CONTRACTORS WORKING BEYOND CONTRACT WHEN THE ENFORCEMENT OF SUCH PROVISIONS WILL RESULT IN A REDUCTION OF THE FULL BENEFITS OF THE FEDERAL HIGHWAY ACT OF 1921 AND ALL AMENDMENTS THERETO.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 32-4102, R.C.M. 1947, is amended to read as follows:

"32-4102. **Competitive bidding.** (1) When the estimated cost of any work exceeds one thousand dollars (\$1,000), the commission shall let the contract by competitive bidding. Award shall be made upon such notice and upon such terms as the commission may prescribe by its rules and regulations. However, except when prohibited by federal law, the commission must make awards and contracts in accordance with the provisions of sections 82-1924 and 82-1926.

(2) If the commission finds that such work may be done in some more efficient manner, it need not let the contract by competitive bidding.

(3) If, on any highway construction work financed in whole or in part by federal funds, the United States secretary of commerce affirmatively finds that under the circumstances relating to a particular project some method other than competitive bidding is in the public interest, the commission may enter into contracts with any board of county commissioners. Such contracts may authorize each county to acquire rights of way for, survey, and construct farm to market, secondary, or feeder roads within the county by force account, unit price, or otherwise, as may be agreed by the commission and each board.

(4) *If, on any highway construction work financed in whole or in part by federal funds the commission finds that enforcement of the provisions contained in sections 84-3507 and 82-1927, relating to public contractors working beyond contract time will result in a reduction in the full benefits of the Federal Highway Act of 1921 and all amendments thereto, it may waive enforcement of such provisions."*

Approved March 25, 1974

**CHAPTER NO. 279**

AN ACT TO END COUNTY FINANCIAL PARTICIPATION IN FEDERAL MEDICAL ASSISTANCE PROGRAMS AND TO LOWER THE MAXIMUM COUNTY LEVY WHICH MAY BE IMPOSED FOR SUPPORT OF POOR AND INDIGENT PERSONS, AMENDING SECTIONS 71-1524 AND 71-106, R.C.M. 1947; AND REPEALING SECTIONS 71-1519 AND 71-1522, R.C.M. 1947; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 71-1524, R.C.M. 1947, is amended to read as follows:

"71-1524. **Exclusion of lien.** No applicant hereunder shall be required to execute an agreement for lien on his real property. No lien may be imposed against the property of any individual prior to his death on account of medical assistance paid or to be paid on his behalf (except pursuant to the judgment of a court on account of benefits incorrectly paid on behalf of such individual). There shall be no adjustment or recovery (except, in the case of an individual who was sixty-five (65) years of age or older when he received such assistance, from his estate, and then only after the death of his surviving spouse, if any, and only at a time when he has no surviving child who is under age *eighteen (18)* or is blind or permanently and totally disabled) of any medical assistance correctly paid on behalf of such individual. Recoveries shall be prorated to the federal government and the *state* in the proportion to which each contributed to the medical assistance. *Recovery for medical assistance paid prior to July 1, 1974, shall be prorated to reimburse the county share of participation.* The provisions of this act are hereby extended to provide for the recovery of all medical assistance paid under sections 71-1511 through 71-1524 and likewise to all medical aid to the aged assistance paid by the state department during the period of time July 1, 1965, through June 30, 1967."

Section 2. Section 71-106, R.C.M. 1947, is amended to read as follows:

"71-106. **Support of poor and indigent persons — tax levy.** The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law:

To provide for the care and maintenance of the indigent sick, except as otherwise provided in other parts of this act, or the otherwise dependent poor of the county; erect and maintain hospitals therefor, or otherwise provide for the same, and for said purposes to levy and collect annually a tax on property not exceeding *thirteen and one-half (13 ½)* mills, which levy shall be made at the time other tax levies are made on property, as provided by law."

Section 3. Sections 71-1519 and 71-1522, R.C.M. 1947, are repealed.

Section 4. This act shall become effective July 1, 1974.

Approved March 25, 1974

## CHAPTER NO. 280

AN ACT CREATING THE STRIP MINE SITING ACT AND PROVIDING FOR CONTROL OF THE LOCATION OF NEW STRIP MINES AND PREPARATORY WORK; PROVIDING FOR PERMITS, RECLAMATION PLANS, AND PENALTIES.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is a new section to be numbered 50-1601, R.C.M. 1947, which reads as follows:

50-1601. **Short title.** This act shall be known and may be cited as "The Strip Mine Siting Act."

Section 2. There is a new section to be numbered 50-1602, R.C.M. 1947, which reads as follows:

50-1602. **Policy of state — purposes of act — exercise of general police power.** (1) It is the policy of this state to provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

(2) It is the purpose of this act:

(a) to vest in the department the authority to review new strip mine site locations and reclamation plans and either approve or disapprove such locations and plans and to exercise general administration and enforcement of this act; and

(b) to vest in the board the authority to adopt rules, to suspend and revoke permits, and to conduct hearings; and

(c) to satisfy the requirement of article IX, section 2 of the constitution of this state, that all lands disturbed by the taking of natural resources be reclaimed; and

(d) to insure that adequate information is available on areas proposed for strip mining so that mining and reclamation plans may be properly formulated to accommodate areas that are suitable for strip mining.

(3) This act is deemed to be an exercise of the general police power to provide for the health and welfare of the people.

Section 3. There is a new section to be numbered 50-1603, R.C.M. 1947, which reads as follows:

50-1603. **Definitions.** When used in this act, unless a different meaning clearly appears from the context:

(1) "Operation" means all of the premises, facilities, railroad loops, roads, power lines, and equipment used in the process of producing and removing mineral from a designated strip mine area.

(2) "Board" means the board of land commissioners as provided for in article X, section 4 of the constitution of this state.

(3) "Department" means the department of state lands provided for in Title 82A, chapter 11.

(4) "New strip mine" means a strip mining operation proposed for an area of land which the department determines, because of distance from an existing strip mine operation or because of important differences in topography, soils, wildlife, geologic structure or vegetation from an exist-

ing strip mine operation, does not constitute an expansion of an existing operation.

(5) "Preparatory work" means those on site disturbances, excluding prospecting, associated with the initiation of a new strip mine, including but not limited to the construction of railroad spurs or loops, buildings to house mining operations, roads, storage and train load-out facilities, transmission lines, erection of draglines and loading shovels and other similar work.

(6) "Strip mining" means any part of the process followed in the production of mineral by the open cut method including mining by the auger method or any similar method which penetrates a mineral deposit and removes mineral directly through a series of openings made by a machine which enters the deposit from a surface excavation, or any other method or process in which the strata or overburden is removed or displaced in order to recover the mineral.

(7) "Mineral" means mineral as defined in section 50-1036(1), R.C.M. 1947.

(8) "Person" means a person, partnership, corporation, association or other legal entity, or any political subdivision or agency of the state.

(9) "Operator" means a person who intends to operate a new strip mine involving the removal of more than ten thousand (10,000) cubic yards of mineral or overburden.

Section 4. There is a new section to be numbered 50-1604, R.C.M. 1947, which reads as follows:

**50-1604. Orders and rules of board — hearings.** The board:

(1) shall issue after an opportunity for a hearing, orders requiring an operator to adopt the remedial measures necessary to comply with this act and rules adopted under this act;

(2) shall issue after an opportunity for a hearing, a final order directing the department to revoke a permit, when the requirements set forth by the notice of noncompliance, order of suspension, or an order of the board requiring remedial measures have not been complied with according to the terms herein;

(3) shall adopt after an opportunity for a hearing, general rules pertaining to new strip mines and preparatory work to accomplish the purposes of this act;

(4) shall conduct hearings under provisions of this act or rules adopted by the board.

Section 5. There is a new section to be numbered 50-1605, R.C.M. 1947, which reads as follows:

**50-1605. Administration — functions of department.** The department:

(1) shall exercise general supervision, administration, and enforcement of this act and all rules and orders adopted under this act;



(2) shall order the suspension of any permit for failure to comply with this act, any rule adopted under this act or permit issued pursuant to this act;

(3) shall order the halting of any operation that is started without first having secured a permit as required by this act;

(4) shall make investigations and inspections necessary to insure compliance with this act;

(5) shall encourage and conduct investigations, research, experiments and demonstrations, and collect and disseminate information relating to new strip mines and reclamation of lands and waters affected by preparatory work;

(6) shall adopt rules with respect to the filing of reports, the issuance of permits and other matters of procedure and administration.

Section 6. There is a new section to be numbered 50-1606, R.C.M. 1947, which reads as follows:

**50-1606. Permit required to engage in preparatory work.** No person may commence preparatory work until the operator shall have first obtained from the department a mine site location permit for a new strip mine, or a permit under chapter 10, Title 50, R.C.M. 1947, if the application for such permit under Title 50 includes an appropriate long range mining plan acceptable to the department.

Section 7. There is a new section to be numbered 50-1607, R.C.M. 1947, which reads as follows:

**50-1607. Application for permit — contents — permit authorization — notification — fee — bond.** (1) A person desiring a mine site location permit shall file with the department an application which shall contain a reclamation plan for any preparatory work and such other information the department deems necessary to determine if the proposed area to be affected by the operation is appropriate for the location of a new strip mine. The department may require any information included in, but not limited to, an application for a strip mining permit as required by chapter 10, Title 50, R.C.M. 1947.

(2) A mine site location permit shall authorize the applicant to engage in preparatory work upon the area described in the application and designated in the permit for a period of one (1) year from the date of issuance and is renewable until the applicant has applied for and received a strip mining permit in accordance with chapter 10, Title 50, R.C.M. 1947.

(3) The department shall notify the applicant within three hundred sixty-five (365) days of receipt of a complete application if the proposed site is an acceptable location for development of a new strip mine. If the site is approved, the department shall issue the applicant a mine site location permit. If the location is not approved, the department shall notify the applicant in writing, setting forth reasons why the location is not acceptable. The department shall also notify the applicant within three hundred sixty-five (365) days of receipt of a complete application whether the proposed reclamation plan is or is not acceptable. If the plan is not

acceptable, the department shall set forth the reasons for non-acceptance of the plan. It may propose modifications, delete areas, or reject the entire plan.

(4) A fee of fifty dollars (\$50) shall be paid before the mine site location permit required in this act may be issued. The operator shall also file with the department a bond payable to the state of Montana with surety satisfactory to the department in the penal sum to be determined by the board (on the recommendation of the commissioner) of not less than two hundred dollars (\$200) nor more than ten thousand dollars (\$10,000) for each acre or fraction thereof of the area of land to be disturbed by preparatory work, with a minimum bond of five thousand dollars (\$5,000), conditioned upon the faithful performance of the requirements set forth in this act and of the rules of the board. In determining the amount of the bond within the above limits, the board shall take into consideration the character and nature of the surface disturbances, the future suitable use of the land involved and the cost of removing or burying facilities, backfilling, grading, topsoiling, and reclamation to be required. Notwithstanding the above limits the bond may not be less than the total estimated cost to the state of completing the work described in the reclamation plan.

Section 8. There is a new section to be numbered 50-1608, R.C.M. 1947, which reads as follows:

**50-1608. Refusal of permit — grounds.** (1) The department may not issue a permit under this act if it finds that a new strip mine is not consistent with the purposes and policies of this act.

(2) The department shall not approve a new strip mining site or preparatory work site for any areas of land or water included in the application if the department determines that the area could not be approved under the criteria specified in Section 50-1042, R.C.M. 1947.

(3) The department shall not issue a permit under this act if a proposed reclamation plan does not meet the requirements of Title 50, chapter 10, R.C.M. 1947.

Section 9. There is a new section to be numbered 50-1609, R.C.M. 1947, which reads as follows:

**50-1609. Notice of noncompliance — suspension of permits — conditions required for reinstatement of permits.** (1) If any of the requirements of this act or rules or orders of the department and the board have not been complied with within the time limits set by the department or the board or by this act, the department shall serve a notice of noncompliance on the operator, or where found necessary, the commissioner shall order the suspension of a permit. The notice or order shall be handed to the operator in person or served by registered mail addressed to the permanent address shown on the application for a permit. The notice of noncompliance or order of suspension shall specify in what respects the operator has failed to comply with this act or the rules or orders of the department and the board. If the operator has not complied with the requirement set forth in the notice of noncompliance or order of suspension within time limits set therein, the permit may be revoked by order of the board and the performance bond forfeited to the department.

(2) Any additional strip mining or mine site location permits held by an operator whose mine site location permit has been revoked shall be suspended and the operator is not eligible to receive another permit or to have the suspended permits reinstated until he has complied with all the requirements of this act in respect to former permits issued him. An operator who has forfeited a bond is not eligible to receive another permit unless the land for which the bond was forfeited has been reclaimed without cost to the state, or the operator has paid into the reclamation account a sum together with the value of the bond, the board finds adequate to reclaim the lands. The department may not issue any additional permits to an operator who has repeatedly been in noncompliance or violation of this act.

Section 10. There is a new section to be numbered 50-1610, R.C.M. 1947, which reads as follows:

**50-1610. Receipts paid into special fund — use of fund.** (1) All fees, forfeit funds, and other moneys available or paid to the department under the provisions of this act shall be placed in the state treasury and credited to a special agency account to be designated as the strip mining and reclamation fund. This fund shall be available to the department by appropriation and shall be expended for the administration and enforcement of this act and for the reclamation and revegetation of land and the rehabilitation of water affected by any mining operations. Any unencumbered and any unexpended balance of this fund remaining at the end of any fiscal year shall not lapse but shall be carried forward for the purposes of this act until expended or until appropriated by subsequent legislative action.

Section 11. There is a new section to be numbered 50-1611, R.C.M. 1947, which reads as follows:

**50-1611. Violation — civil penalty — injunction — misdemeanor.** (1) A person or operator who violates any of the provisions of this act or rules or orders adopted under this act shall pay a civil penalty of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for the violation, and an additional civil penalty of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each day during which a violation continues, and may be enjoined from continuing such violations as hereinafter provided in this section. These penalties shall be recoverable in any action brought in the name of the state of Montana by the attorney general in the district court of the first judicial district of this state, in and for the county of Lewis and Clark, or in the district court having jurisdiction of the defendant.

(2) The attorney general shall, upon the request of the commissioner, sue for the recovery of the penalties provided in this section for, and bring an action for a restraining order, temporary or permanent injunction, against an operator or other person violating or threatening to violate an order adopted under this act.

(3) A person who willfully violates any of the provisions of this act, or any determination or order adopted under this act which has become final is guilty of a misdemeanor and shall be fined not less than five

hundred dollars (\$500) and not more than five thousand dollars (\$5,000). Each day on which a violation occurs constitutes a separate offense.

Section 12. There is a new section to be numbered 50-1612, R.C.M. 1947, which reads as follows:

**50-1612. Mandamus to compel enforcement of law.** (1) A resident of this state, with knowledge that a requirement of this act or a rule adopted under this act, is not being enforced by a public officer or employee whose duty it is to enforce the requirement or rule may bring the failure to enforce to the attention of the public officer or employee by a written statement under oath that shall state the specific facts of the failure to enforce the requirement or rule. Knowingly making false statements or charges in the affidavit subjects the affiant to penalties prescribed under the law of perjury.

(2) If the public officer or employee neglects or refuses for an unreasonable time after receipt of the statement to enforce the requirement or rule, the resident may bring an action of mandamus in the district court of the first judicial district of this state, in and for the county of Lewis and Clark or in the district court of the county in which the land is located. The court, if it finds that a requirement of this act or a rule adopted under this act, is not being enforced shall order the public officer or employee, whose duty is to enforce the requirement or rule, to perform his duties. If he fails to do so, the public officer or employee shall be held in contempt of court and is subject to the penalties provided by law.

Section 13. There is a new section to be numbered 50-1613, R.C.M. 1947, which reads as follows:

**50-1613. Procedure for hearings and appeals.** All hearing and appeal procedures shall be in accordance with the Montana Administrative Procedure Act.

Section 14. There is a new section to be numbered 50-1614, R.C.M. 1947, which reads as follows:

**50-1614. Submitted information may be accepted to meet strip mining permit requirements.** The department may choose to accept information submitted under this act to the extent it is applicable and relevant as satisfying the requirements of chapter 10, Title 50.

Section 15. There is a new section to be numbered 50-1615, R.C.M. 1947, which reads as follows:

**50-1615. Termination of permit.** A mine site location permit granted by the department in accordance with the provisions of this act shall remain in full force and effect until the provisions of the permit are complied with and the bond is released, except that those areas of land covered by a mine site location permit for which a strip mining permit is granted pursuant to the provisions of chapter 10, Title 50, shall be released from the terms and provisions of the mine site location permit.

Section 16. There is a new section to be numbered 50-1616, R.C.M. 1947, which reads as follows:

50-1616. **Effect of strip mine siting permit on subsequent strip mining permits.** When the department has sufficient information to approve or disapprove a mine site location permit application on either the entire area being considered for a mine site location permit or a portion thereof on the grounds listed in section 50-1042(2) and (4), it shall so state in a written statement to the operator. This decision is binding on the department with regard to strip mining permit applications as specified in chapter 10, Title 50, R.C.M. 1947, unless:

(1) new information is submitted or obtained in compliance with chapter 10, Title 50, which indicates a situation not existing or known at the time of the issuance of a permit under this act;

(2) an application under this act misrepresented information related to the criteria;

(3) a situation develops because of strip mining operations which was not in existence at the time of the issuance of a permit under this act.

Section 17. There is a new section to be numbered 50-1617, R.C.M. 1947, which reads as follows:

50-1617. The provisions of this act shall not apply where any preparatory work was conducted prior to January 1, 1974, or for which contracts for preparatory work or the sale of Montana coal from a new strip mine by an operator holding a valid permit under section 50-1039 were in existence and proven specific notice thereof given to the department prior to January 1, 1974.

Approved March 25, 1974

## CHAPTER NO. 281

AN ACT FOR THE GENERAL REVISION OF THE LAWS RELATING TO HARD ROCK MINING BY AMENDING SECTIONS 50-1203, 50-1204, 50-1207, 50-1208, 50-1209, 50-1210, 50-1211, 50-1213, 50-1216, 50-1220, 50-1222; AND REPEALING SECTIONS 50-1217, 50-1218, R.C.M. 1947.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 50-1203, R.C.M. 1947, is amended to read as follows:

"50-1203. **Definitions.** As used in this act, unless the context indicates otherwise: (1) "Surface mining" shall mean and include all or any part of the process involved in mining of minerals by removing the overburden and mining directly from the mineral deposits thereby exposed, including, but not limited to, open-pit mining of minerals naturally exposed at the surface of the earth, mining by the auger method, and any and all similar

methods by which earth or minerals exposed at the surface are removed in the course of mining. Surface mining shall not include the extraction of oil, gas, bentonite, clay, coal, sand, gravel, phosphate rock, or uranium nor excavation or grading conducted for on-site farming, on-site road construction, or other on-site building construction.

(2) "Unit of surface mined area" shall mean and include that area of land and surface water included within an operating permit actually disturbed by surface mining during each twelve-month period of time, beginning at the date of the issuance of the permit, and shall comprise and include the area from which overburden and/or minerals have been removed, the area covered by mining debris, and all additional areas used in surface mining or underground mining operations which, by virtue of such use, are thereafter susceptible to erosion in excess of the surrounding undisturbed portions of land.

(3) "Disturbed land" shall mean and include that area of land or surface water disturbed, beginning at the date of the issuance of the permit, and shall comprise that area from which the overburden, and/or minerals have been removed; tailings ponds, waste dumps, roads, conveyor systems, leach dumps, and all similar excavations or covering resulting from said operation and which has not been previously reclaimed under the reclamation plan.

(4) "Abandonment of surface or underground mining" may be presumed when it is shown that continued operation will not resume.

(5) "Underground mining" shall mean and include all methods of mining other than surface mining.

(6) "Person" shall mean and include any person, corporation, firm, association, partnership or other legal entity engaged in exploration for or development or mining of minerals on or below the surface of the earth.

(7) "Mineral" shall mean and include any ore, rock or substance, other than oil, gas, bentonite, clay, coal, sand, gravel, phosphate rock or uranium, taken from below the surface or from the surface of the earth for the purpose of milling, concentration, refinement, smelting, manufacturing, or other subsequent use or processing or for stockpiling for future usage, refinement or smelting.

(8) "Exploration" shall mean and include all activities conducted on or beneath the surface of lands resulting in material disturbance of the surface for the purpose of determining the presence, location, extent, depth, grade, and economic viability of mineralization in those lands, if any, other than mining for production and economic exploitation, as well as all roads made for the purpose of facilitating exploration, except as noted in section 20 [50-1220] and section 24 [50-1224] herein.

(9) "Development" shall mean and include all operations between exploration and mining.

(10) "Mining" shall be deemed to have commenced at such time as the operator shall first mine ores or minerals in commercial quantities for sale, beneficiation, refining, or other processing or disposition or shall first take bulk samples for metallurgical testing in excess of aggregate of ten thousand (10,000) short tons.

(11) "Reclamation plan" shall mean and include the operator's written proposal, as required and approved by the board for reclamation of the land that will be disturbed, which proposal shall include to the extent practical at the time of application for a developing or operating permit: (a) a statement of the proposed subsequent use of the land after reclamation;

(b) Plans for surface gradient restoration to a surface suitable for the proposed subsequent use of the land after reclamation is completed, and proposed method of accomplishment;

(c) Manner and type of revegetation or other surface treatment of disturbed areas;

(d) Procedures proposed to avoid foreseeable situations of public nuisance, endangerment of public safety, damage to human life or property, or unnecessary damage to flora and fauna in or adjacent to the area;

(e) Method of disposal of mining debris;

(f) Method of diverting surface waters around the disturbed areas where necessary to prevent pollution of such waters or unnecessary erosion;

(g) Method of reclamation of stream channels and stream banks to control erosion, siltation, and pollution;

(h) Such maps and other supporting documents as may be reasonably required by the *department*;

(i) A time schedule for reclamation that meets the requirements of section 9 [50-1209] of this act.

(12) "Vegetative cover" as used in this act shall mean the type of vegetation, grass, shrubs, trees, or any other form of natural cover deemed suitable at time of reclamation.

(13) "Board" shall mean the *board of land commissioners*, or such state employee or state agency as may succeed to its powers and duties under this act.

(14) "*Department*" shall mean the *department of state lands*.

(15) "Small miner" shall mean any person, firm or corporation engaged in the business of mining who does not remove from the earth during any twenty-four (24) hour period material in excess of one hundred (100) tons in the aggregate."

Section 2. Section 50-1204, R.C.M. 1947, is amended to read as follows:

"50-1204. **Administration — rules and regulations — employment of supervisors.** The board is charged with the responsibility of administering this act. In order to implement its terms and provisions, the board shall from time to time promulgate such rules and regulations as the board shall deem necessary. The board may delegate such powers, duties and functions to *the department* as it deems necessary for the performance of its duties as administrator of this act. The board shall employ experi-

enced, qualified persons in the field of mined land reclamation, who for the purpose of this act, are hereinafter referred to as supervisors.”

Section 3. Section 50-1207, R.C.M. 1947, is amended to read as follows:

“50-1207. **Exploration license and development permit — duration and renewal — requirements.** (1) Effective sixty (60) days after the date on which the board shall first promulgate its regulations as authorized by section 4 [50-1204] of this act, no person shall engage in exploration or development in the state without first obtaining an exploration license or development permit from the board to do so, such license or permit to be issued for a period of one (1) year from date of issue and to be renewable from year to year on application therefor filed at any time within the thirty (30) days next preceding the expiration of the current license or permit and payment of like fee as required for a new license or permit; provided that the applicant for renewal is not then held by the board to be in violation of any provision of this law. *Such license or permit shall be subject to suspension and revocation as provided by this act.*

(2) An exploration license shall be issued to any applicant therefor who shall: (i) pay a fee of five dollars (\$5) to the board; (ii) agree to reclaim any surface area damaged by the applicant during exploration operations, all as may be reasonably required by the board, (iii) not be in default of any other reclamation obligation under this law.

(a) *An application for an exploration license shall be made in writing, notarized and submitted to the department in duplicate upon forms prepared and furnished by it. The application shall include an exploration map or sketch in sufficient detail to locate the area to be explored and to determine whether significant environmental problems would be encountered. The department shall, by rules and regulations, determine the precise nature of such exploration map or sketch. The applicant must state what types of prospecting and excavation techniques will be employed in disturbing the land.*

(b) Upon filing of any certificate of claim location as permitted by federal and state mining laws and regulations, the locator shall provide copies of said certificates to the board.

(c) *Prior to the issuance of an exploration license, the applicant shall file with the department a reclamation and revegetation bond in a form and amount as determined by the department in accordance with section 50-1211.*

(d) *In the event that the holder of an exploration permit desires to mine or develop the area covered by the exploration license and has fulfilled all of the requirements for a development or operating permit, the department may allow the postponement of the reclamation of the acreage explored if that acreage is incorporated into the complete reclamation plan submitted with the application for a development or operating permit. Any land actually affected by exploration or excavation under an exploration license and not covered by the development or operating reclamation plan shall be reclaimed within two (2) years after the completion of exploration*



*or abandonment of the site, in a manner acceptable to the department.*

(3) *An application for a development permit shall be made in writing, notarized and submitted to the department in duplicate upon forms prepared and furnished by it. An application shall contain the following:*

- (a) *a twenty-five dollar (\$25) application fee;*
- (b) *a description of the area within which development is to be conducted;*
- (c) *a suitable map or aerial photograph showing topographic, cultural and drainage features;*
- (d) *a statement of proposed development methods, i.e., drilling, trenching, etc., and the location of primary support roads and facilities;*
- (e) *an estimate of the acreage expected to be disturbed in the twelve (12) months following issue of the permit, together with a map of the general area of the development operations for a like period. If the board shall, on good cause, consider the operator's estimate of the quantity of surface to be disturbed to be more than twenty per cent (20%) below what the board considers correct in the circumstances, it may by order require the operator to increase the amount of his bond accordingly.*
- (f) *a proposed reclamation plan for lands to be disturbed in the next twelve (12) months. Such plan must be approved by the department prior to the permit issuance;*
- (g) *an affidavit, as may be required by the board, showing that any lands disturbed by exploration, development, or mining in the state of Montana by applicant within two years prior to the application for said permit is or is in course of being reclaimed in accordance with the provisions of this act; or submission of an affidavit and such supporting documents and evidence as may be required by the board showing that any lands disturbed by exploration, development, or mining by applicant in the state of Montana during the two (2) years prior to the application for said permit will be restored in accordance with the provisions of this act.*
- (h) *a reclamation and revegetation bond in form and amount to be determined by the department in accordance with section 50-1211, prior to the issuance of a development permit.*

(4) *Upon receipt of a complete development application the department shall, within sixty (60) days, notify the applicant that the reclamation plan is or is not acceptable. If the plan is not acceptable the department shall notify the applicant, in writing, of the deficiencies. Failure of the department to so act within that period shall constitute approval of the application and the permit shall be issued promptly thereafter.*

(5) *Employees of persons holding a valid license or permit under this act shall be deemed included in and covered by such license or permit.*

(6) *Upon proper application by the holder of an exploration license or development permit, the board may excuse such holder from reclamation obligations with reference to any specified openings or excavations expos-*

ing geological indications or phenomena of especial interest, even though the licensee does not apply or have any intention to apply for development license or operating permit for the land in which such openings or excavations have been made."

Section 4. Section 50-1208, R.C.M. 1947, is amended to read as follows:

**"50-1208. Operating permit — fee — contents of application.**

(1) Effective sixty (60) days after the date on which the board shall first promulgate its regulations as authorized by section 4 [50-1204] of this act, no person shall engage in mining in the state without first obtaining an operating permit from the board to do so. A separate operating permit shall be required for each mine complex. Any person, prior to receiving an operating permit from the board, must pay the basic permit fee of twenty-five dollars (\$25) and must submit an application on a form provided by the board, which shall contain the following information and any other pertinent required data by the rules and regulations:

(a) Name and address of the operator and, if a corporation or other business entity, the name and address of its principal officers, partners and the like and its resident agent for service of process, if required by law;

(b) Minerals expected to be mined;

(c) A proposed reclamation plan;

(d) Expected starting date of mining;

(e) A map showing the specific area to be mined and the boundaries of the land which will be disturbed; topographic detail; the location and names of all streams, roads, railroads, and utility lines on or immediately adjacent to the area; location of proposed access roads to be built and the names and addresses of the surface and mineral owners of all lands within the mining area, to the extent known to applicant;

(f) Types of access roads to be built and manner of reclamation of road sites on abandonment;

(g) A plan of mining which will provide, within limits of normal operating procedures of the industry, for completion of mining and associated land disturbances.

*(h) A reclamation and revegetation bond in form and amount to be determined by the department in accordance with section 50-1211."*

Section 5. Section 50-1209, R.C.M. 1947, is amended to read as follows:

**"50-1209. Reclamation plan — accomplishment of specific activities.**

(a) The reclamation plan shall provide that reclamation activities, particularly those relating to control of erosion, shall, to the extent feasible, be conducted simultaneously with mining and in any case shall be initiated promptly after completion or abandonment of mining on those portions of the mine complex that will not be subject to further disturbance by the mining operation. In the absence of an order by the board

providing a longer period, the plan shall provide that reclamation activities shall be completed not more than two (2) years after completion or abandonment of mining on said portion of mine complex.

(b) In the absence of emergency or suddenly threatened or existing catastrophe, an operator may not depart from an approved plan without having previously obtained from the *department* written approval of his proposed change.

(c) Provision shall be made to avoid accumulation of stagnant water in the mined area which may serve as a host or breeding ground for mosquitoes or other disease-bearing or noxious insect life.

(d) All final grading shall be made with nonnoxious, nonflammable, noncombustible solids unless approval has been granted by the board for a supervised sanitary fill.

(e) Where mining has left an open pit exceeding two (2) acres of surface area, and composition of the floor and/or walls of which pit are likely to cause formation of acid, toxic, or otherwise pollutive solutions (hereinafter "objectionable effluents") on exposure to moisture, the reclamation plan must include provisions which adequately provide for:

(1) Insulation of all faces from moisture of water contact by covering to a depth of two (2) feet or more with material or fill not susceptible itself to generation of such objectionable effluents; or

(2) Processing of any such objectionable effluents in the pit before their being allowed to flow or be pumped out of it to reduce toxic or other objectionable ratios to a level deemed safe to humans and the environment by the board; or

(3) Drainage of any such objectionable effluents to settling or treatment basins when the objectionable effluents must be reduced to levels deemed safe by the board before release from the settling basin; or

(4) Absorption and/or evaporation of objectionable effluents in the open pit itself; and

(5) Prevention of entrance into the open pit by persons or livestock lawfully upon adjacent lands by fencing, warning signs, and such other devices as may reasonably be required by the board.

(f) Vegetative cover will be required in the reclamation plan if appropriate to the future use of the land as specified in the reclamation plan.

(g) *The* reclamation plan shall provide for the reclamation of all disturbed land. Proposed reclamation need not reclaim the areas to a better condition or different use than that which existed prior to development or mining.

(h) A reclamation plan will be approved by the board if it adequately provides for the accomplishment of the activities heretofore specified."

Section 6. Section 50-1210, R.C.M. 1947, is amended to read as follows:

**"50-1210. Inspection of mining site — issuance of operating**

**permit — modification of reclamation plan — succession to interest in uncompleted mining operation.** Upon receipt of an application for an operating permit the mining site shall be inspected by *the department*. Within *sixty (60) days* of receipt of the *complete* application and reclamation plan by the board and receipt of the permit fee, the board shall either issue an operating permit to the applicant or return any incomplete or inadequate application to the applicant along with a description of the deficiencies. Failure of the board to so act within that period shall constitute approval of the application and the permit shall be issued promptly thereafter.

The operating permit shall be granted for the period required to mine the land covered by the plan and shall be valid until the surface or underground mining authorized by the permit is completed or abandoned, unless the permit is suspended or *revoked* by the board as provided in this act. The operating permit shall provide that the reclamation plan may be modified by the board, upon proper application of the permittee, or *department*, after timely notice and opportunity for hearing, at any time during the term of the permit and for any of the following reasons:

- (a) To modify the requirements so they will not conflict with existing laws;
- (b) The previously adopted reclamation plan is impossible or impracticable to implement and maintain;
- (c) *When significant environmental problem situations are revealed by field inspection.*

When one (1) operator succeeds to the interest of another in any uncompleted mining operation by sale, assignment, lease, or otherwise, the board may release the first operator from the duties imposed upon him by this act as to such operation; provided, that both operators have complied with the requirements of this act and the successor operator assumes the duty of the former operator to complete the reclamation of the land, in which case the board shall transfer the permit to the successor operator upon approval of the successor operator's bond as required under this act."

Section 7. Section 50-1211, R.C.M. 1947, is amended to read as follows:

**"50-1211. Performance bond.** *The applicant shall file with the department a bond payable to the state of Montana with surety satisfactory to the department in the penal sum to be determined by the department of not less than two hundred dollars (\$200) nor more than twenty-five hundred dollars (\$2,500) for each acre or fraction thereof of the disturbed area, conditioned upon the faithful performance of the requirements of this act and the rules of the board. In lieu of such bond the applicant may file with the board a cash deposit, an assignment of a certificate of deposit, or other surety acceptable to the board. Regardless of the above limits, the bond shall not be less than the estimated cost to the state to complete the reclamation of the disturbed land. A public or governmental agency shall not be required to post a bond under the provisions of this act. A blanket performance bond covering two (2) or more operations may be accepted by the board. Such blanket bond shall adequately secure the estimated total*

*number of acres of disturbed land. When determined by the department that the set bonding level of a permit or license does not represent the present costs of reclamation, the department may modify the bonding requirements of that permit or license.*

*No bond filed in accordance with the provisions of this act shall be released by the department until the provisions of this act, the rules adopted pursuant thereto and this reclamation plan have been fulfilled."*

Section 8. Section 50-1213, R.C.M. 1947, is amended to read as follows:

**"50-1213. Inspection to determine compliance with reclamation plan — rectification of deficiencies — board actions to reclaim disturbed lands.** Following receipt of the permittee's report, and at any other reasonable time the board may elect, the board shall cause the permit area to be inspected to determine if the permittee has complied with the reclamation plan and the board's rules and regulations.

The permittee shall proceed with reclamation as scheduled in his approved reclamation plan. Following written notice by the board noting deficiencies, the permittee shall commence action within thirty (30) days to rectify these deficiencies and shall diligently proceed until the deficiencies are corrected; provided, that deficiencies that also violate other laws that require earlier rectification shall be corrected in accordance with the applicable time provisions of such laws. The board may extend performance periods referred to in this section and in section 9 [50-1209] of this act, for delays clearly beyond the permittee's control, but only when the permittee is, in the opinion of the board, making every reasonable effort to comply.

Within thirty (30) days after notification by the permittee and when in the judgment of the board reclamation of a unit of disturbed land area is properly completed, the permittee shall be notified in writing and his bond on said area shall be released or decreased proportionately to the acreage included within the bond coverage.

If reclamation of disturbed land is not pursued in accordance with the reclamation plan and the permittee has not commenced action to rectify deficiencies within thirty (30) days after notification by the board, or if reclamation is not properly completed in conformance with the reclamation plan within two (2) years after completion or abandonment of operation on any fraction of the permit area, or such longer period as may have been authorized hereunder, or if, after default by the permittee, the surety either refuses or fails to perform the work to the satisfaction of the board within the time required therefor, the board may, with the staff, equipment and material under its control, or by contract with others, take such actions as are necessary for required reclamation of the disturbed lands. Such work shall be let on the basis of competitive bidding. The board shall keep a record of all necessary expenses incurred in carrying out the work or activity authorized under this section, including a reasonable charge for the services performed by the state's personnel and the state's equipment and materials utilized.

The board shall notify the permittee and his surety by order. The order

shall state the amount of necessary expenses incurred by the board in reclaiming the disturbed land and a notice that the amount is due and payable to the board by the permittee and the surety. If the amount specified in the order is not paid within thirty (30) days after receipt of the notice, the attorney general, upon request of the board, shall bring an action on behalf of the state in district court. The surety shall be liable to the state to the extent of the bond; *the permittee shall be liable for the remainder of the cost.*

In addition to the other liabilities imposed by this act, failure to commence action to remedy specific deficiencies in reclamation within thirty (30) days after notification by the board or failure to satisfactorily complete reclamation work on any segment of the permit area within two (2) years, or such longer period as the board may permit on permittee's application therefor, or on the board's own motion, after completion or abandonment of operations on any segment of the permit area shall constitute sufficient grounds for cancellation of a permit or license and refusal to issue another permit or license to the applicant; provided, however, that such action shall not be effected while an appeal is pending from any ruling requiring the same."

Section 9. Section 50-1216, R.C.M. 1947, is amended to read as follows:

"50-1216. **Administrative remedies.** *All hearings and appeal procedures shall be in accordance with the Administrative Procedure Act.*"

Section 10. Section 50-1220, R.C.M. 1947, is amended to read as follows:

"50-1220. **Exemption of small miners — written agreement — noncompliance a misdemeanor.** No provisions of this act shall apply to any small miner when the small miner *annually* agrees in writing, (1) That he shall not pollute or contaminate any stream; and

(2) That he shall provide protection for human and animal life through the installation of bulkheads installed over safety collars and the installation of doors on tunnel portals; and

(3) He shall not conduct a mining operation which will result in more than five (5) acres of the earth's surface being disturbed and unreclaimed, *and provides a map locating his mining operations. Such map shall be to a size and scale as determined by the department.*

Failure to comply with the regulations stipulated in this section will constitute a misdemeanor, and this offense will subject the owners, and/or operators of said project to a fine of not less than ten dollars (\$10) nor more than one hundred dollars (\$100), payable to the department of revenue of the state of Montana, or any board, commission, or person authorized to collect said fine."

Section 11. Section 50-1222, R.C.M. 1947, is amended to read as follows:

"50-1222. **Violation penalties.** (1) *A person who violates any of the provisions of this act or rules or orders adopted under this act shall pay*

*a civil penalty of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for the violations, and an additional civil penalty of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each day during which a violation continues, and may be enjoined from continuing such violations as hereinafter provided in this section. These penalties shall be recoverable in any action brought in the name of the state of Montana by the attorney general in the district court of the first judicial district of this state, in and for the county of Lewis and Clark, or in the district court having jurisdiction of the defendant.*

*(2) The attorney general shall, upon the request of the department, sue for the recovery of the penalties provided in this section for, and bring an action for a restraining order, temporary or permanent injunction, against an operator or other person violating or threatening to violate an order adopted under this act."*

Section 12. There is a new section to be numbered 50-1225, R.C.M. 1947, which reads as follows:

**50-1225. Notice of noncompliance—suspension of permits.** If any of the requirements of this act or the rules or the reclamation plan have not been complied with within the time limits set by the department or board or by this act, the department shall serve a notice of noncompliance on the licensee or permittee, or where found necessary, the commissioner shall order the suspension of the permit. The notice or order shall be handed to the licensee or permittee in person or served by registered mail addressed to the permanent address shown on the application for a permit. The notice of noncompliance shall specify in what respects the operator has failed to comply with this act, the rules or the reclamation plan. If the licensee or permittee has not complied with the requirements set forth in the notice of noncompliance or order of suspension within the time limits set therein the permit may be revoked by order of the board and the performance bond forfeited to the department.

Section 13. There is a new section to be numbered 50-1226, R.C.M. 1947, which reads as follows:

**50-1226. Prior operating permits exempt — exploration licenses and development permits remain in effect.** The provisions of this act shall not apply to any operating permit issued pursuant to Chapter 252 of the laws of 1971. Exploration licenses and development permits obtained pursuant to Chapter 252 of the laws of 1971 shall remain in effect until the date of renewal, unless revoked or suspended in accordance with that act.

Section 14. Sections 50-1217 and 50-1218, R.C.M. 1947, are repealed.

Approved March 25, 1974

## CHAPTER NO. 282

AN ACT TO AMEND SECTIONS 79-1012 THROUGH 79-1018, R.C.M.

1947, THE STATE BUDGET ACT, ALLOWING FOR APPOINTMENT OF BUDGET DIRECTOR, CHANGES IN BUDGET FORMAT AND CLARIFYING AND ADJUSTING THE LANGUAGE OF THOSE SECTIONS.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 79-1012, R.C.M. 1947, is amended to read as follows:

**"79-1012. Governor chief budget officer — appointment of budget director.** The governor shall be the chief budget officer of the state *and shall appoint a budget director, who shall hold office at the pleasure of the governor, and whose duty it shall be to carry out the provisions of this chapter.*"

Section 2. Section 79-1013, R.C.M. 1947, is amended to read as follows:

**"79-1013. Blanks for preparation of budget estimates — distribution — form — submission of information.** In the preparation of a state budget the *budget* director shall not later than the first day of July in the year preceding the convening of the legislative assembly, distribute to all state offices and *departments*, including the *judicial branch, and the legislative branch*, the proper blanks necessary for the preparation of budget estimates. These blanks shall be in such form as shall be prescribed by the *budget* director to procure such information as the *budget* director shall, in his discretion, feel is necessary for the preparation of a budget including budget estimates, *to include estimates of receipts, actual receipts, estimates of disbursements, and actual disbursements*, and other information classified and grouped as requested by the *budget* director and covering such period or periods of time as specified by the *budget* director.

(a) Except as provided in this paragraph, it shall be the duty of each department, agency *and office* to submit information requested by the *budget* director on or before the *fifteenth* day of August in the *even* year preceding the convening of the legislative assembly. *The Montana university system, the department of institutions, and the department of highways* shall submit such information on or before the first day of September of such year.

(b) If any department, institution or agency shall fail to present such requested information within the time herein specified, the *budget* director shall note that fact in the budget submitted to the governor, and the *budget* director shall prepare a budget request on behalf of such department, institution or agency, based upon his studies of the operations, plans and needs thereof. *Legislative branch requests shall be included in the budget submitted by the governor without changes.*"

Section 3. Section 79-1014, R.C.M. 1947, is amended to read as follows:

**"79-1014. Preliminary budget — preparation — submission to governor and governor-elect.** Upon receipt of the completed forms and other available data and information, the *budget* director shall examine



the same for the purpose of determining the necessity of the *disbursements* and funds requested and shall, on or before the *fifteenth* day of December in the year preceding the convening of the legislature, submit to the governor and to the governor-elect, if one there be, in writing, a preliminary budget for the ensuing biennium containing the detailed information hereinafter required to be set forth in the budget to be submitted by the governor to the legislative assembly. *If so requested by the governor-elect, the governor shall incorporate in the budget, as a separate section, such estimates, comments and recommendations as the governor-elect may wish to make, and this section of the budget shall be transmitted to the legislative assembly without change, and it is the duty of the governor-elect in recommending changes to show a balance between proposed disbursements and anticipated receipts."*

Section 4. Section 79-1015, R.C.M. 1947, is amended to read as follows:

**"79-1015. Submission of budget to legislature — form — contents.** The governor shall, following the receipt of the preliminary budget from the *budget* director have prepared a budget for the ensuing biennium and shall submit said budget to each member of the legislative assembly at the time of the convening of the legislative assembly. The budget submitted shall set forth a balanced financial plan for the state government for each fiscal year of the ensuing biennium, *which plan shall consist of the following:*

(1) A financial *plan* of the state government for the ensuing biennium shall embrace a *consolidated* budget summary setting forth the aggregate figures of the budget in such manner as to show a balance between the total proposed *disbursements* and the total anticipated *receipts* together with the other means of financing the budget for each fiscal year of the ensuing biennium, contrasted with the corresponding figures for the last completed fiscal year and the fiscal year in progress. The *consolidated* budget summary shall be supported by explanatory schedules or statements, classifying *receipts and disbursements* contained therein by *fund*, and where applicable, *organizational unit*.

(2) *An analysis of the actual and projected receipts, disbursements and solvency of each accounting entity within each fund for the current and subsequent biennium.*

(3) *A detailed analysis of receipts by accounting entity within fund indicating classification and source of funds.*

(4) *A departmental analysis summarizing past and proposed spending plans by agency and the means of financing the proposed plan. Information presented shall include the following:*

(a) *a statement of departmental goals and objectives and a statement of goals and objectives for each program of the department;*

(b) *actual disbursements for the completed fiscal year of the current biennium, estimated disbursements for the current fiscal year, and governor's recommendations for the ensuing biennium by program;*

(c) *actual disbursements for the completed fiscal year of the current biennium, estimated disbursements for the current fiscal year, and governor's recommendations for the ensuing biennium by disbursement category; and*

(d) *a statement containing further recommendations of the governor should he deem it necessary.*

(5) *Detailed recommendations for the state long-range building program. Each recommendation shall be presented by department, institution, agency or branch by funding source, with a description of each proposed project. An appropriation measure shall be presented by project, source of funding, and department, agency, institution or branch for which the project is primarily intended.*

(6) *Appropriation measures detailed by program, fund, and accounting entity, authorizing disbursements and related restrictions thereto by department, institution, or agency of the state."*

Section 5. Section 79-1016, R.C.M. 1947, is amended to read as follows:

"79-1016. **Inquiries and investigations by budget director.** The *budget* director or *his designated representative* shall make such further inquiries and investigations as he shall deem necessary as to any item included in the report and estimates furnished by any department, agency or institution. In making such investigations, he shall be allowed his necessary expenses of travel and subsistence as provided by law in visiting any institution or department in the state. The *budget* director may appoint a chief assistant and may employ such other personnel as may be necessary to carry out the provisions of this chapter."

Section 6. Section 79-1017, R.C.M. 1947, is amended to read as follows:

"79-1017. **Other duties of director.** The *budget* director in addition to the duties hereinbefore set forth shall perform such other duties as the governor as chief budget officer of the state may direct. He shall, as often as requested by the governor, prepare and furnish reports to the governor concerning appropriations made by the legislative assembly, the receipts and *disbursements* made by any department, office or institution of the state. The *budget* director shall be available to all standing committees of the house of representatives and the senate concerned with appropriations, revenue, finance and claims and shall furnish to such committees any information required while said committees are considering the budget."

Section 7. Section 79-1018, R.C.M. 1947, is amended to read as follows:

"79-1018. **Power of director to demand and receive information from state departments, officers, etc.** The *budget* director shall have power to demand and receive from every department, officer, board, commission, or institution, at any time, any and all information requested."

Approved March 25, 1974

## CHAPTER NO. 283

AN ACT TO PREVENT DISCRIMINATION IN EMPLOYMENT,

PUBLIC ACCOMMODATIONS, EDUCATION, AND REAL PROPERTY TRANSACTIONS; TO ESTABLISH A COMMISSION ON HUMAN RIGHTS; TO AUTHORIZE THE CREATION OF LOCAL COMMISSIONS AND TO MAKE UNIFORM THE LAW WITH REFERENCE THERETO, AND FOR OTHER PURPOSES; AND REPEALING SECTIONS 64-302 AND 64-303, R.C.M. 1947.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is a new section to be numbered 64-305, R.C.M. 1947, which reads as follows:

64-305. **Definitions.** As used in this act, unless the context requires otherwise:

(1) "Age" means number of years since birth. It does not mean level of maturity or ability to handle responsibility. These latter criteria may represent legitimate considerations as reasonable grounds for discrimination without reference to age.

(2) "Commission" means the commission for human rights provided for in section 82A-1015.

(3) "Department" means the department of labor and industry provided for in Title 82A, chapter 10.

(4) "Educational institution" means a public or private institution and includes an academy, college, elementary or secondary school, extension course, kindergarten, nursery, school system, university, a business, nursing, professional, secretarial, technical or vocational school or an agent of an educational institution.

(5) "Employee" means any individual employed by an employer.

(6) "Employer" means an employer of one (1) or more persons but does not include a fraternal, charitable, or religious association or corporation, if the association or corporation is not organized for private profit; or to provide accommodation or services that are available on a nonmembership basis.

(7) "Employment agency" means a person undertaking to procure employees or opportunities to work.

(8) "Financial institution" means a commercial bank, trust company, mutual savings bank, cooperative bank, homestead association, finance company, mutual savings and loan association or an insurance company.

(9) "Housing accommodation" means a building or portion of a building, whether constructed or to be constructed, which is or will be used as the sleeping quarters of its occupants.

(10) "Labor organization" means an organization and an agent of the organization, organized for the purpose, in whole or in part, of collective bargaining, dealing with employers concerning grievances, terms of conditions of employment, or of other mutual aid protection of employees.

(11) "Mental handicap" means any mental disability resulting in subaverage intellectual functioning and impaired social competence.

(12) "National origin" means ancestry.

(13) "Person" means one (1) or more individuals, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated employees, employers, employment agencies, or labor organizations.

(14) "Physical handicap" means any physical disability, infirmity, malformation or disfigurement which is caused by bodily injury, birth defect or illness, including epilepsy, and shall include without limitation any degree of paralysis, amputation, lack of physical coordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog for the blind, wheelchair, or other remedial appliance or device.

(15) "Public accommodation" means a place which caters or offers its services, goods, or facilities to the general public including but not limited to a public inn, restaurant, eating house, hotel, roadhouse, place where food or spirituous or malt liquors are sold for consumption, motel, soda fountain, soft drink parlor, tavern, night club, trailer park, resort, campground, barber shop, beauty parlor, bathroom, resthouse, theater, swimming pool, skating rink, golf course, cafe, ice cream parlor, transportation company, hospital, and all other public amusement and business establishments, subject only to the conditions and limitations established by law and applicable alike to all persons.

Section 2. There is a new section to be numbered 64-306, R.C.M. 1947, which reads as follows:

**64-306. Discriminatory practices described and prohibited.** (1) It is an unlawful discriminatory practice for:

(a) an employer to refuse employment to a person, or to bar him from employment, or to discriminate against him in compensation or in a term, condition, or privilege of employment because of his race, religion, color, or national origin or because of his age, physical or mental handicap or sex when the reasonable demands of the position do not require an age, physical or mental handicap or sex distinction;

(b) a labor organization, because of a person's sex, age, physical or mental handicap, race, religion, color, or national origin, to exclude or expel him from its membership, apprenticeship, or training program, or to discriminate in any way against a member of, or an applicant to the labor organization or an employer or an employee;

(c) an employer or employment agency to print or circulate or cause to be printed or circulated a statement, advertisement, or publication, or to use a form of application for employment, which expresses, directly or indirectly, a limitation, specification or discrimination as to sex, age, physical or mental handicap, race, creed, color, or national origin, or an intent to make the limitation, unless based upon a bona fide occupational qualification;

(d) an employer, labor organization or employment agency to discharge, expel, or otherwise discriminate against a person because he has opposed any practices forbidden under this act or because he has filed a complaint, testified, or assisted in a proceeding under this act.

The state, employers, labor organizations, and employment agencies shall maintain records on age, sex, and race that are required to administer the civil rights law and regulations. These records are confidential and available only to federal and state personnel legally charged with administering civil rights laws and regulations. However, statistical information compiled from records on age, sex, and race shall be made available to the general public.

(2) It is an unlawful discriminatory practice for the owner, lessee, manager, agent, or employee of a public accommodation:

(a) to refuse, withhold from, or deny to a person any of its services, goods, facilities, advantages, or privileges because of sex, race, age, physical or mental handicap, religion, color, or national origin;

(b) to publish, circulate, issue, display, post or mail a written or printed communication, notice or advertisement which states or implies that any of the services, goods, facilities, advantages or privileges of the public accommodation will be refused, withheld from or denied to a person of a certain race, religion, sex, age, physical or mental handicap, color or national origin except when the distinction is based on reasonable grounds under rules adopted by the commission.

(3) It is an unlawful discriminatory practice for the owner, lessee, manager or other person having the right to sell, lease, or rent a housing accommodation or improved or unimproved property:

(a) to refuse to sell, lease, or rent the housing accommodation or property to a person because of sex, race, religion, color, age, physical or mental handicap, or national origin, except when the distinction is based on reasonable grounds under rules adopted by the commission;

(b) to discriminate against a person because of sex, race, religion, age, physical or mental handicap, color, or national origin in a term, condition, or privilege relating to the use, sale, lease, or rental of a housing accommodation or improved or unimproved property, except when the distinction is based on reasonable grounds under rules adopted by the commission; or

(c) to make a written or oral inquiry or record of the sex, race, religion, age, physical or mental handicap, color, or national origin of a person seeking to buy, lease, or rent a housing accommodation or improved or unimproved property, except when the distinction is based on reasonable grounds under rules adopted by the commission;

(d) a private residence designed for single family occupancy, in which sleeping space is rented to guests in the family home in which the landlord also resides, may be excluded from the provisions of this act.

(4) It is an unlawful discriminatory practice for a financial institution, upon receiving an application for financial assistance to permit an official or employee during the execution of his duties:

(a) to discriminate against the applicant because of sex, race, religion, age, physical or mental handicap, color, or national origin in a term, condition or privilege relating to the obtainment or use of the institution's financial assistance.

(5) It is an unlawful discriminatory practice for the state or any of its political subdivisions:

(a) to refuse, withhold from, or deny to a person any local, state, or federal funds, services, goods, facilities, advantages, or privileges because of race, religion, sex, color, age, physical or mental handicap, or national origin;

(b) to publish, circulate, issue, display, post, or mail a written or printed communication, notice, or advertisement which states or implies that any local, state, or federal funds, services, goods, facilities, advantages, or privileges of the office or agency will be refused, withheld from, or denied to a person of a certain race, religion, sex, color, age, physical or mental handicap, or national origin or that the patronage of a person belonging to a particular race, creed, sex, color, or certain age or national origin or possessing a physical or mental handicap, is unwelcome, or not desired or solicited.

(c) to refuse employment to a person, or to bar him from employment, or to discriminate against him in compensation or in a term, condition, or privilege of employment because of his political beliefs. However, this prohibition does not apply to policy-making positions on the immediate staff of an elected officer of the executive branch provided for in article VI, section 1, of the Montana constitution, nor to the appointment by the governor of a director of a principal department provided for in article VI, section 7, of the Montana constitution.

(6) It is an unlawful discriminatory practice for an educational institution:

(a) to exclude, expel, limit, or otherwise discriminate against an individual seeking admission as a student or an individual enrolled as a student in the terms, condition, and privileges of the institution because of race, color, age, physical handicap, or national origin or because of mental handicap unless based on reasonable grounds under rules adopted by the commission;

(b) to make or use a written or oral inquiry or form of application for admission that elicits or attempts to elicit information, or to make or keep a record, concerning the race, color, religion, physical or mental handicap, or national origin of an applicant for admission, except as permitted by regulations of the commission;

(c) to print, publish, or cause to be printed or published a catalog or other notice or advertisement indicating a limitation, specification, or discrimination based on the race, color, religion, age, physical or mental handicap, sex, or national origin of an applicant for admission; or

(d) to announce or follow a policy of denial or limitation through a quota or otherwise of educational opportunities of a group or its members because of race, color, religion, physical or mental handicap, or national origin.

Section 3. There is a new section to be numbered 64-307, R.C.M. 1947, which reads as follows:

**64-307. Sex, age, physical or mental handicap, race, religion, color, origin no justification for discrimination.** (1) Sex, age, physical or mental handicap, race, religion, color or national origin, either singly or in combination, may not comprise justification for discrimination in and of themselves unless the nature of the service requires the discrimination for the legally demonstrable purposes of correcting a previous discriminatory practice.

(2) Separate lavatory, bathing or dressing facilities based on the distinction of sex may be maintained for the purpose of modesty or privacy.

Section 4. There is a new section to be numbered 82A-1015, R.C.M. 1947, which reads as follows:

**82A-1015. Commission for human rights.** (1) There is a commission for human rights.

(2) The commission consists of five (5) members appointed by the governor.

(3) The commission is designated as a quasi-judicial board for the purposes of section 82A-112.

(4) The commission is allocated to the department of labor and industry for administrative purposes only as provided in section 82A-108.

Section 5. There is a new section to be numbered 64-308, R.C.M. 1947, which reads as follows:

**64-308. Complaint — how filed — by whom.** (1) A person who believes he is aggrieved by any discriminatory practice prohibited by this act may sign and file with the department a written, verified complaint stating the name and address of the person alleged to have engaged in discriminatory practice, and the particulars of the alleged discriminatory practice. The department may file a complaint in like manner when a discriminatory practice comes to its attention.

(2) The department shall notify the commission in writing of all complaints filed with the department. The commission shall meet a minimum of four (4) times a year to hear and act upon all complaints filed.

(3) At any time after a complaint is filed under this act, alleging an unlawful discriminatory practice, the commission may file a petition in the district court in the county in which the subject of the complaint occurs, or in the county in which a respondent resides or transacts business, seeking appropriate temporary relief against this practice, including an order restraining the respondent from interfering in any manner with an order the commission may enter with respect to the complaint. The court has the power to grant the temporary relief or restraining order it considers just and proper. However, no relief or order extending beyond fourteen (14) days may be granted except by consent of the respondent and upon a finding by the court that there is reasonable cause to believe that the respondent has engaged in discriminatory practices.

(4) The department shall informally investigate the matters set out in a filed complaint promptly and impartially. If the department determines that the allegations are supported by substantial evidence, it shall immediately try to eliminate the discriminatory practice by conference, conciliation, and persuasion.

(5) If the informal efforts to eliminate the alleged discrimination are unsuccessful, the department shall inform the commission of the failure and the commission shall cause written notice to be served together with a copy of the complaint, requiring the person, employer, business, corporation or agency charged in the complaint to answer the allegations of the complaint at a hearing before the commission. The hearing shall be held by the commission in the county where the unlawful conduct is alleged to have occurred unless the person, employer, business, corporation, organization, agency or the commission requests a change of venue for good cause shown. The case in support of the complaint may be presented before the commission by the department, the complainant or by an attorney representing the complainant. The hearing and any subsequent proceedings under the act except as permitted under section 7, shall be held in accordance with the Montana Administrative Procedure Act.

Section 6. There is a new section to be numbered 64-309, R.C.M. 1947, which reads as follows:

**64-309. Power of commission on finding of discrimination.** (1) If the commission finds that a person against whom a complaint was filed has engaged in the discriminatory practice alleged in the complaint, it shall order him to refrain from engaging in the discriminatory conduct. The order may prescribe conditions on the accused's future conduct relevant to the type of discriminatory practice found.

(a) The order may require any reasonable measure to correct the discriminatory practice and to rectify any harm, pecuniary or otherwise, to the person discriminated against.

(b) The order may require a report on the manner of compliance.

(c) The order may not require the payment of any punitive damages as defined by the Revised Codes of Montana.

(2) If the commission finds that a person against whom a complaint was filed has not engaged in the discriminatory practice alleged in the complaint, it shall issue and cause to be served on the complainant an order dismissing the complaint.

Section 7. There is a new section to be numbered 64-310, R.C.M. 1947, which reads as follows:

**64-310. Injunction to enforce commission order.** The department may petition the district court in the county where the discriminatory practice occurred or in which the respondent resides or transacts business to enforce the commission's order by injunction.

Section 8. There is a new section to be numbered 64-311, R.C.M. 1947, which reads as follows:



**64-311. Department may employ attorney.** (1) The department may employ an attorney as legal counsel. He shall advise the commission in legal matters arising in the discharge of its duties, shall assist in the preparation and presentation of complaints to the commission, and shall represent the commission in legal actions to which it is a party. The attorney general shall perform this function at the request of the commission.

Section 9. There is a new section to be numbered 64-312, R.C.M. 1947, which reads as follows:

**64-312. Unlawful to violate act — penalty.** (1) It is unlawful for a person to aid, abet, incite, compel or coerce the doing of an act forbidden under this act or to attempt to do so.

(2) No person or institution may discharge or discriminate against any participant or potential participant because he or she has made a complaint, assisted with an investigation or instituted proceedings.

(3) A person, employer, business, organization, corporation or agency, both public and private, who or which willfully engages in an unlawful discriminatory practice prohibited by this act or willfully resists, prevents, impedes, or interferes with the commission, the department or any of its authorized representatives in the performance of duty under this act or who or which willfully violates an order of the commission or violates this act in any other manner, is guilty of a misdemeanor and is punishable by a fine of not more than five hundred dollars (\$500) or by imprisonment for not more than six (6) months or both.

Section 10. Sections 64-302 and 64-303, R.C.M. 1947, are repealed.

Approved March 25, 1974

## CHAPTER NO. 284

AN ACT REGULATING ABORTIONS; PROVIDING FOR KEEPING OF RECORDS OF ABORTIONS; DECLARING THE RIGHT TO REFUSE TO PARTICIPATE IN ABORTIONS; PROTECTING THE LIFE OF THE FETUS; PROVIDING PENALTIES AND AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is a new section to be numbered 94-5-613, R.C.M. 1947, which reads as follows:

**94-5-613. Short title.** This act shall be known and may be cited as the "Montana Abortion Control Act."

Section 2. There is a new section to be numbered 94-5-614, R.C.M. 1947, which reads as follows:

**94-5-614. Statement of purpose.** The legislature reaffirms the tradition of the state of Montana to protect every human life, whether unborn

or aged, healthy or sick. In keeping with this tradition and in the spirit of our constitution, we reaffirm the intent to extend the protection of the laws of Montana in favor of all human life.

Section 3. There is a new section to be numbered 94-5-615, R.C.M. 1947, which reads as follows:

94-5-615. **Definitions.** As used in this act:

(1) "Department" means the department of health and environmental sciences.

(2) "Facility" means a hospital, health care facility, physician's office or other place in which an abortion is performed.

(3) "Informed consent" means voluntary consent to abortion by the woman upon whom the abortion is to be performed only after full disclosure to her by the physician who is to perform the abortion of such of the following information as is reasonably chargeable to the knowledge of such physician in his professional capacity:

(a) The stage of development of the fetus, the method of abortion to be utilized, and the effects of such abortion method upon the fetus.

(b) The physical and psychological effects of abortion.

(c) Available alternatives to abortion, including childbirth and adoption.

Such informed consent may be evidenced by a written statement in the form prescribed by the department signed by the physician and the woman upon whom the abortion is to be performed in which the physician certifies that he has made the full disclosure provided above and in which the woman upon whom the abortion is to be performed acknowledges that the above disclosures have been made to her and that she voluntarily consents to the abortion.

(4) "Abortion" means the performance of, or assistance or participation in the performance of, or submission to, an act or operation intended to terminate a pregnancy without live birth.

(5) "Viability" means the ability of a fetus to live outside the mother's womb, albeit with artificial aid.

Section 4. There is a new section to be numbered 94-5-616, R.C.M. 1947, which reads as follows:

94-5-616. **Consent to abortion.** (1) No abortion may be performed upon any woman in the absence of informed consent.

(2) No abortion may be performed upon any woman in the absence of:

(a) the written notice to her husband, unless her husband is voluntarily separated from her;

(b) the written notice to a parent, if living, or the custodian or legal guardian of such woman, if she is under eighteen (18) years of age and unmarried.

(3) The above informed consent or consent is not required if a licensed physician certifies the abortion is necessary to preserve the life of the mother.

(4) No executive officer, administrative agency or public employee of the state of Montana or of any local governmental body has power to issue any order requiring an abortion or shall coerce any woman to have an abortion, nor shall any person coerce any woman to have an abortion.

(5) Violation of subsection (1), (2) or (4) of this section is a misdemeanor.

(6) The use of the prescribed departmental form of informed consent required by section 3 [94-5-615(3)] shall not be mandatory until July 1, 1974. Prior thereto, a written statement fairly setting forth the content specified by section 3 [94-5-615(3)] shall be in compliance therewith.

Section 5. There is a new section to be numbered 94-5-617, R.C.M. 1947, which reads as follows:

**94-5-617. Protection of life and health of infant.** (1) A person commits the offense of criminal homicide, as defined in sections 94-5-101 through 94-5-105, if he purposely, knowingly, or negligently causes the death of a premature infant born alive, if such infant is viable.

(2) Whenever a premature infant which is the subject of abortion if is born alive and is viable, it becomes a dependent and neglected child subject to the provisions of state law, unless:

(a) the termination of the pregnancy is necessary to preserve the life of the mother; or

(b) the mother and her spouse, or either of them, have agreed in writing in advance of the abortion, or within seventy-two (72) hours thereafter, to accept the parental rights and responsibilities of the premature infant if it survives the abortion procedure.

(3) No person may use any premature infant born alive for any type of scientific research, or other kind of experimentation except as necessary to protect or preserve the life and health of such premature infant born alive.

(4) The department shall make regulations to provide for the humane disposition of dead infants or fetuses.

(5) Violation of subsection (3) of this section is a felony.

Section 6. There is a new section to be numbered 94-5-618, R.C.M. 1947, which reads as follows:

**94-5-618. Control of practice of abortion.** (1) No abortion may be performed within the state of Montana:

(a) Except by a licensed physician.

(b) After the first three months of pregnancy, except in a hospital licensed by the department.

(c) After viability of the fetus, unless in appropriate medical judgment, the abortion is necessary to preserve the life or health of the mother. An abortion under this subsection (1) (c) may only be performed if:

(i) the foregoing judgment of the physician who is to perform the abortion is first certified in writing by him, setting forth in detail the facts upon which he relies in making such judgment; and

(ii) two other licensed physicians have first examined the patient and concurred in writing with such judgment.

The foregoing certification and concurrence is not required if a licensed physician certifies the abortion is necessary to preserve the life of the mother.

(2) The timing and procedure used in performing an abortion under subsection (1) (c) of this section must be such that the viability of the fetus is not intentionally or negligently endangered, as the term "negligently" is defined in section 94-2-101 (32). The fetus may be intentionally endangered or destroyed only if necessary to preserve the life or health of the mother.

(3) No physician, facility, or other person or agency shall engage in solicitation, advertising, or other form of communication having the purpose of inviting, inducing, or attracting any person to come to such physician, facility, or other person or agency to have an abortion or to purchase abortifacients.

(4) Violation of subsections (1) and (2) of this section is a felony. Violation of subsection (3) of this section is a misdemeanor.

Section 7. There is a new section to be numbered 94-5-619, R.C.M. 1947, which reads as follows:

**94-5-619. Reporting of practice of abortion.** (1) Every facility in which an abortion is performed within the state of Montana shall keep on file upon a form prescribed by the department a statement dated and certified by the physician who performed the abortion setting forth such information with respect to the abortion as the department by regulation shall require; including, but not limited to, information on prior pregnancies; the medical procedure employed to administer the abortion; the gestational age of the fetus; the vital signs of the fetus after abortion, if any; and if after viability, the medical procedures employed to protect and preserve the life and health of the fetus.

(2) The physician performing an abortion shall cause such pathology studies to be made in connection therewith as the department shall require by regulation, and the facility shall keep the reports thereof on file.

(3) In connection with an abortion, the facility shall keep on file the original of each of the documents required by this act relating to informed consent, consent to abortion, certification of necessity of abortion to preserve the life or health of the mother, and certification of necessity of abortion to preserve the life of the mother.

(4) Such facility shall within thirty (30) days after the abortion file

with the department a report upon a form prescribed by the department and certified by the custodian of the records or physician in charge of such facility setting forth all of the information required in subsections (1), (2), and (3) of this section, except such information as would identify any individual involved with the abortion. The report shall exclude copies of any documents required to be filed by subsection (3) of this section, but shall certify that such documents were duly executed and are on file.

(5) All reports and documents required by this act shall be treated with the confidentiality afforded to medical records, subject to such disclosure as is permitted by law; except that statistical data not identifying any individual involved in an abortion shall be made public by the department annually, and the report required by subsection (4) of this section to be filed with the department shall be available for public inspection except insofar as it identifies any individual involved in an abortion. Names and identities of persons submitting to abortion shall remain confidential among medical and medical support personnel directly involved in the abortion, and among persons working in the facility where the abortion was performed whose duties include billing the patient or submitting claims to an insurance company, keeping facility records, or processing abortion data required by state law.

(6) The department shall report to the attorney general any apparent violation of this act.

(7) The reports required by this section shall not be mandatory for any abortion performed prior to July 1, 1974.

Section 8. There is a new section to be numbered 94-5-620, R.C.M. 1947, which reads as follows:

**94-5-620. Refusal to participate in abortion.** (1) No private hospital or health care facility shall be required contrary to the religious or moral tenets or the stated religious beliefs or moral convictions of its staff or governing board to admit any person for the purpose of abortion or to permit the use of its facilities for such purpose. Such refusal shall not give rise to liability of such hospital or health care facility, or any personnel or agent or governing board thereof, to any person for damages allegedly arising from such refusal, nor be the basis for any discriminatory, disciplinary, or other recriminatory action against such hospital or health care facility, or any personnel, agent, or governing board thereof.

(2) All persons shall have the right to refuse to advise concerning, perform, assist, or participate in abortion because of religious beliefs or moral convictions. If requested by any hospital or health care facility, or person desiring an abortion, such refusal shall be in writing signed by the person refusing, but may refer generally to the grounds of "religious beliefs and moral convictions." The refusal of any person to advise concerning, perform, assist, or participate in abortion, shall not be a consideration in respect of staff privileges of any hospital or health care facility, nor a basis for any discriminatory, disciplinary, or other recriminatory action against such person, nor shall such person be liable to any person for damages allegedly arising from refusal.

(3) It shall be unlawful to interfere or attempt to interfere with the right of refusal authorized by this section. The person injured thereby shall be entitled to injunctive relief, when appropriate, and shall further be entitled to monetary damages for injuries suffered.

(4) Such refusal by any hospital or health care facility or person shall not be grounds for loss of any privileges or immunities to which the granting of consent may otherwise be a condition precedent, or for the loss of any public benefits.

(5) As used in this section, the term "person" includes one or more individuals, partnerships, associations, and corporations.

Section 9. There is a new section to be numbered 94-5-621, R.C.M. 1947, which reads as follows:

94-5-621. **Other regulations.** The department shall make regulations for a comprehensive system of reporting of maternal deaths and complications within the state of Montana resulting directly or indirectly from abortion, subject to the provisions of section 7 [94-5-619(5)] of this act.

Section 10. There is a new section to be numbered 94-5-622, R.C.M. 1947, which reads as follows:

94-5-622. **Penalties.** (1) A person convicted of criminal homicide under this act is subject to the penalties prescribed by sections 94-5-101 through 94-5-105.

(2) A person convicted of a felony other than criminal homicide under this act is subject to a fine not to exceed one thousand dollars (\$1,000), or imprisonment in the state prison for a term not to exceed five (5) years, or both.

(3) A person convicted of a misdemeanor under this act is subject to a fine not to exceed five hundred dollars (\$500), or imprisonment in the county jail for a term not to exceed six (6) months, or both.

Section 11. There is a new section to be numbered 94-5-623, R.C.M. 1947, which reads as follows:

94-5-623. **Legislative intent.** It is the intent of the legislature to restrict abortion to the extent permissible under decisions of appropriate courts or paramount legislation.

Section 12. There is a new section to be numbered 94-5-624, R.C.M. 1947, which reads as follows:

94-5-624. **Severability.** It is the intent of the legislature that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all the valid applications that are severable from the invalid applications.

Section 13. This act is effective on its passage and approval.

Approved March 25, 1974

## CHAPTER NO. 285

AN ACT AMENDING SECTION 4-332, R.C.M. 1947, TO PROVIDE FOR

SPECIAL PERMITS TO SELL BEER FOR ANY PICNIC, CONVENTION, FAIR, CIVIC OR COMMUNITY ENTERPRISE; AND PROVIDING FOR AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 4-332, R.C.M. 1947, is amended to read as follows:

"4-332. **Special permits to sell beer — application and issuance — fee.** (1) Any association or corporation *conducting a picnic, convention, fair, civic or community enterprise, or sporting event*, shall in the discretion of the *liquor division* be entitled to a special permit to sell beer to the patrons of such *event* to be consumed within the enclosure *wherein the event is held*.

The application of any such association or corporation shall describe the location of such enclosure wherein such *event* is held, the nature of such *event*, the period when it is contemplated that the same will be held. Such application shall be accompanied by the amount of the permit fee hereinafter provided.

The permit issued to such association or corporation shall be a special permit, but shall not authorize the sale of beer except starting one (1) day in advance of the regular period when *events* are being held upon such grounds and during the period described in such application, and for one (1) day thereafter.

The permit fee shall be at the rate of *fifteen dollars (\$15)* per day for each day beer is sold, or *to be sold at those events lasting two (2) or more days*, but in no event less than *thirty dollars (\$30)*, hereby fixed as the minimum fee for such permit.

(2) Any post of a nationally chartered veterans' organization or any lodge of a recognized national fraternal organization, not otherwise licensed under this act, shall in the discretion of the board, without notice or hearing as provided in section 4-407.1, be entitled to a special permit to sell beer at such post or lodge, to members and their guests only, to be consumed within the hall or building of such post or lodge.

The application of such nationally chartered veterans' organization or lodge of a recognized national fraternal organization shall describe the location of the hall or building where the special permit shall be used and the date it will be used. Such application shall be accompanied by a permit fee of *ten dollars (\$10)*.

The special permit issued shall be for a twenty-four (24) hour period ending at 2 a.m. only and the board shall not issue more than twelve (12) such permits to any such post or lodge during a calendar year."

Section 2. **Effective date.** This act is effective on its passage and approval.

Approved March 25, 1974

## CHAPTER NO. 286

AN ACT TO REQUIRE TAXING AUTHORITIES TO HOLD HEARINGS

PRIOR TO INCREASING PROPERTY TAXATION RATES; REQUIRING THE DEPARTMENT OF REVENUE TO CERTIFY TOTAL VALUATIONS AND MILLAGE RATES TO TAXING AUTHORITIES; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is a new section to be numbered 84-7201, R.C.M. 1947, which reads as follows:

84-7201. **Short title.** This act may be cited as the Property Taxpayers Information Act of 1974.

Section 2. There is a new section to be numbered 84-7202, R.C.M. 1947, which reads as follows:

84-7202. **Certification of taxable values and millage rates.** At the time that the assessment roll is prepared and published, the department of revenue shall certify to each taxing authority the taxable value within the jurisdiction of the taxing authority. The department shall also send to each taxing authority a written statement of its best estimate of the total assessed value of all new construction and improvements not included on the previous assessment roll, and the value of deletions from the previous assessment roll. Exclusive of such new construction, improvements, and deletions the department shall certify to each taxing authority a millage rate which will provide the same ad valorem revenue for each taxing authority as was levied during the prior year. For the purpose of calculating the certified millage, the department shall use ninety-five percent (95%) of the taxable value appearing on the roll, exclusive of properties appearing for the first time on the assessment roll.

Section 3. There is a new section to be numbered 84-7203, R.C.M. 1947, which reads as follows:

84-7203. **Increase of tax revenue — advertising of intention required.** No taxing authority shall budget an increased amount of ad valorem tax revenue exclusive of revenue from ad valorem taxation on properties appearing for the first time on the assessment roll, unless it advertises its intention to do so at the same time that it advertises its intention to fix its budget for the forthcoming fiscal year.

Section 4. There is a new section to be numbered 84-7204, R.C.M. 1947, which reads as follows:

84-7204. **Resolution or ordinance for increase over certified millage.** No millage in excess of the department's certified millage shall be levied until a resolution or ordinance has been approved by the governing board of the taxing authority, which resolution or ordinances must be approved by said taxing authority according to the following procedure:

(1) The taxing authority shall advertise its intent to exceed the department's certified millage in a newspaper of general circulation in the county, as provided in section 3 [84-7203] of this act. The advertisement shall state that the taxing authority will meet on a day, at a time



and place fixed in the advertisement, which shall be approximately seven (7) days after the day that the advertisement is published, for the purpose of hearing comments regarding the proposed increase and to explain the reasons for the proposed increase. The meeting may coincide with the meeting on the tentative budget as required by law.

(2) The taxing authority, after the public hearing has been held in accordance with the above procedures, may adopt a resolution or ordinance levying a millage rate in excess of the certified millage. If the resolution or ordinance adopting said millage rate is not approved on the day of the public hearing, the day, time and place at which the resolution or ordinance will be scheduled for consideration and approval by the taxing authority must be announced at the public hearing. If the resolution or ordinance is to be considered at a day and time that is more than two (2) weeks from the public hearing, the taxing authority must again advertise in the same manner as provided in sections 3 [84-7203] and 4(1) [84-7204(1)] of this act.

Section 5. There is a new section to be numbered 84-7205, R.C.M. 1947, which reads as follows:

**84-7205. Approval and copies of resolution or ordinance.** The resolution or ordinance approved in the manner provided for in this act shall be forwarded to the assessor, treasurer and the department of revenue. No millage in excess of the department's certified millage can be levied until the resolution or ordinance to levy required in section 4(1) and (2) [84-7204(1) and (2)] of this act is approved by the governing board of the taxing authority and submitted to the assessor and the department of revenue.

Section 6. There is a new section to be numbered 84-7206, R.C.M. 1947, which reads as follows:

**84-7206. Exceptions for decisions of tax appeal boards.** The department shall notify each taxing authority of any change in the assessment roll which results from actions by the state or county tax appeal boards. An increase in the taxing authority's millage above that certified by the department, or adopted by resolution or ordinance of the governing body of the taxing authority, which is required solely by a reduction of the assessment roll by the state or county board of tax appeals, may be adopted without further notice.

Section 7. There is a new section to be numbered 84-7207, R.C.M. 1947, which reads as follows:

**84-7207. Additional millage increase — readvertising and revoting.** If, after the initial millage vote provided for in section 3 [84-7203] of this act, the taxing authority determines that it requires a greater millage or fails to act in the specified period, it shall readvertise and revote as required in sections 3 and 4 [84-7203 and 84-7204] of this act.

Section 8. There is a new section to be numbered 84-7208, R.C.M. 1947, which reads as follows:

**84-7208. Increase over legal maximum not authorized — reduc-**

**tions permitted.** Nothing contained in this section shall serve to extend or authorize any millage in excess of the maximum millage permitted by law nor prevent the reduction of millage.

**Section 9. Effective date.** This act is effective on its passage and approval.

Approved March 25, 1974

## CHAPTER NO. 287

AN ACT AUTHORIZING SELF-LIQUIDATION BY CITIES OF COSTS OF URBAN RENEWAL PROJECTS; AND AMENDING SECTIONS 11-3910 AND 84-4701.3, R.C.M. 1947.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** There is a new section to be numbered 11-3921, R.C.M. 1947, which reads as follows:

**11-3921. Allocation of taxes.** Any urban renewal plan as defined in section 11-3901, R.C.M. 1947, may contain a provision or be amended to contain a provision that taxes, if any, levied on taxable property in an urban renewal area each year by or for the benefit of any city which has the power to levy a tax, shall, after the effective date of such provision, be allocated as follows:

(1) that portion of the taxes produced by the levies for such city upon the total sum of the assessed value of the taxable property in the urban renewal area as shown upon the assessment roll used in connection with the taxation of such property for such city last equalized prior to the effective date of the urban renewal plan shall be allocated to and when collected shall be paid into the funds of such city as taxes by or for such city on all other property are paid; and

(2) that portion of the levied taxes for such city each year in excess of such amount shall be allocated to and when collected, shall be paid into a special fund held by the city treasurer to pay the principal and interest on bonds, the issue of which is authorized by section 11-3910, R.C.M. 1947.

**Section 2.** There is a new section to be numbered 11-3922, R.C.M. 1947, which reads as follows:

**11-3922. Time when act applies.** The provisions of subsection 1 of section 1 [11-3921] of this act shall first apply to the assessment roll next following the enactment or amendment to the urban renewal plan authorizing the allocation of funds under this act.

**Section 3.** There is a new section to be numbered 11-3923, R.C.M. 1947, which reads as follows:

**11-3923. Disposition of unexpended funds.** All moneys remaining unexpended from the special fund created by this act after payment of all the principal and interest on such bonds shall be paid into the city's general fund.

Section 4. Section 11-3910, R.C.M. 1947, is amended to read as follows:

**"11-3910. Issuance of bonds.** (a) A municipality shall have the power to issue bonds from time to time in its discretion to finance the undertaking of any urban renewal project under this act, including, without limiting the generality thereof, the payment of principal and interest upon any advances for surveys and plans for urban renewal projects, and shall also have power to issue refunding bonds for the payment or retirement of such bonds previously issued by it. Such bonds shall not pledge the general credit of the municipality and shall be made payable, as to both principal and interest, solely from the income, proceeds, revenues, and funds of the municipality derived from, or held in connection with, its undertaking and carrying out of urban renewal projects under this act; provided, however, that payment of such bonds, both as to principal and interest, may be further secured by a pledge of any loan, grant, or contribution from the federal government or other source, in aid of any urban renewal projects of the municipality under this act.

(b) Bonds issued under this section shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction, and shall be subject only to the provisions of the Uniform Commercial Code. Bonds issued under the provisions of this act are declared to be issued for an essential public and governmental purpose, and, together with interest thereon and income therefrom, shall be exempted from all taxes.

(c) Bonds issued under this section shall be authorized by resolution or ordinance of the local governing body and may be issued in one or more series and shall bear such date or dates, be payable upon demand or mature at such time or times, bear interest at such rate or rates, be in such denomination or denominations, be in such form either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption (with or without premium), be secured in such manner, and have such other characteristics, as may be provided by such resolution or trust indenture or mortgage issued pursuant thereto.

(d) Such bonds may be sold at not less than ninety-eight per cent (98%) of par at public or private sale, or may be exchanged for other bonds on the basis of par: Provided, that such bonds may be sold to the federal government at private sale at not less than par and, in the event less than all of the authorized principal amount of such bonds is sold to the federal government, the balance may be sold at public or private sale at not less than ninety-eight per cent (98%) of par at an interest cost to the municipality of not to exceed the interest cost to the municipality of the portion of the bonds sold to the federal government.

(e) In case any of the public officials of the municipality whose signatures appear on any bonds or coupons issued under this act shall cease to be such officials before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if such officials had remained in office until such delivery. Any provision of any law to the contrary notwithstanding, any bonds issued pursuant to this act shall be fully negotiable.

(f) In any suit, action, or proceeding involving the validity or enforceability of any bond issued under this act or the security therefor, any such bond reciting in substance that it has been issued by the municipality in connection with an urban renewal project, as herein defined, shall be conclusively deemed to have been issued for such purpose and such project shall be conclusively deemed to have been planned, located, and carried out in accordance with the provisions of this act."

Section 5. There is a new section to be numbered 11-3924, R.C.M. 1947, which reads as follows:

11-3924. **Maximum term of bonds.** No bond for the payment of which the special fund described in section 1 [11-3921] is used may be issued for a longer term than twenty (20) years.

Section 6. Section 84-4701.3, R.C.M. 1947, is amended to read as follows:

"84-4701.3. **Allocation of all-purpose levy.** In the event the all-purpose levy method, provided for in section 84-4701.2, is followed in municipal financing, any municipality following it shall appropriate the levy to the several departments of the municipality in its annual budget and appropriation ordinance, or in other legal manner, as the governing body of such municipality shall deem best, *provided, however, that any municipality which has adopted an urban renewal plan, may allocate the funds raised by its levy within the urban renewal area, in accordance with the provisions of its urban renewal plan.*"

Section 7. There is a new section to be numbered 11-3925, R.C.M. 1947, which reads as follows:

11-3925. **Use of funds generated by bonds.** Money generated by the sale of bonds for which funds are allocated pursuant to section 1 [11-3921] of this act may be used by a city only for improvement or construction of streets, curbs, gutters, sidewalks, pedestrian malls, alleys, parking lots, sewers, waterlines or waterways.

Approved March 25, 1974

## CHAPTER NO. 288

AN ACT TO PROVIDE FOR THE PAYMENT OF AN HONORARIUM OR ADJUSTED COMPENSATION TO EACH RESIDENT OF MONTANA IN MILITARY SERVICE IN THE VIETNAM AREA DURING THE VIETNAM WAR BETWEEN JANUARY 1, 1961, AND MARCH 31, 1973.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is a new section to be numbered 77-2301, R.C.M. 1947, which reads as follows:

77-2301. **Definitions.** Terms used in this law have the meanings stated in this section unless the context clearly requires otherwise:

(1) "Vietnam War" means the period between January 1, 1961, and March 31, 1973.

(2) "Vietnam area" means the countries of Vietnam, Laos, Cambodia, and Thailand and the waters surrounding them.

(3) "Military forces" mean the United States army, navy, marine corps, air force, coast guard, and all other groups, branches, and services forming a part of the armed services under the control and subject to the discipline of the department of defense of the United States.

(4) "Military service" means service on active duty for other than training purposes by any person in any of the military forces at any time during the Vietnam War.

(5) "Person" means any man or woman.

(6) "Serviceman" means a person entitled to receive payments under section 2 [77-2302] of this law.

(7) "Resident of Montana" means a person who at the time of his entry into the military service had his residence in Montana. A person who on January 1, 1961, was serving on active duty in any of the military forces, and who at the time of his then last entry into such service made his home in Montana, and who was in the military service at some time during the Vietnam War, shall be deemed a resident of Montana unless, after such last entry and before entry into military service in such war, he had established and was then maintaining residence in some other state; and any such serviceman whose parents or surviving parent then resided in Montana shall be deemed a resident of Montana.

(8) "United States" means the area of the fifty (50) states and the District of Columbia, to high-water mark on their water boundaries.

(9) "Board" means the Board of Examiners.

Section 2. There is a new section to be numbered 77-2302, R.C.M. 1947, which reads as follows:

77-2302. **Purpose — honorarium granted.** (1) In recognition and appreciation of the valor and devotion of the persons who by their military service discharged the obligation of the state of Montana to contribute from its manpower to the defense of the republic in the prosecution of the Vietnam War, and in partial adjustment for the economic detriment suffered by them by reason of their service, the state of Montana hereby grants to each such person an honorarium, or adjusted compensation, in a sum to be computed as provided in this section.

(2) Each resident of Montana who was in military service at any time during the Vietnam War, and during part or all of the period of such service was in the Vietnam area, is granted the sum of eighteen

dollars and seventy-five cents (\$18.75) for each month and major fraction of a month of such service in the Vietnam area. For the purpose of this subdivision:

(a) any serviceman who, while on active duty in the Vietnam area during the Vietnam War, suffered disease or injury from any cause whatsoever, including injury from exposure to weather conditions, and in line of duty, and is hospitalized therefor by any of the military forces, shall be deemed to have been in military service in the Vietnam area as long as he shall be or was continuously hospitalized in any hospital or similar institution under the control of or employed by the United States, wherever situated;

(b) any serviceman who was taken prisoner by the enemy in the Vietnam area, and who was classified by the department of defense as a prisoner of war, shall be deemed to have been in military service in the Vietnam area as long as he shall be or was continuously so classified; but

(c) each such prisoner of war shall be paid not less than seven hundred fifty dollars (\$750), and no serviceman shall be paid, under any of the provisions of this subdivision, more than seven hundred fifty dollars (\$750).

(3) The surviving spouse, children, or parents, as the case may be of any serviceman who shall have died in line of duty while in military service in the Vietnam area during the Vietnam War, or who shall have died from any cause attributable to his military service, in the Vietnam area in line of duty, as shown by the records of the United States veterans administration, prior to receiving a payment under this section, or who is officially listed as missing in action, shall be paid the amount to which such deceased or missing serviceman would have been entitled had he received such payment, or if that amount is less than seven hundred fifty dollars (\$750), then such surviving spouse, children, or parents, as the case may be, shall be paid the sum of seven hundred fifty dollars (\$750) and no more.

(4) Notwithstanding any other provision of this law:

(a) a person who has received or is entitled to receive from any other state or territory of the United States a gratuity, bonus, honorarium, adjusted compensation, or similar payment for military service in the military forces in the Vietnam War, shall be paid by the state of Montana only the excess, if any, of the aggregate amount to which he would otherwise be entitled hereunder, over and above the amount he receives or is entitled to receive from such other state or territory; and

(b) no payment shall be made under this law to any person who has been dishonorably discharged from military service and has not been restored by proper authority to an honorable status, or to any person still in service who is in a dishonorable status and has not been restored by proper authority to an honorable status at the time of payment.

Section 3. There is a new section to be numbered 77-2303, R.C.M. 1947, which reads as follows:

**77-2303. Procedure when death occurs before payment.** (1) In the case of death of any serviceman before payment under this law, the amount granted to him in section 2 [77-2302] shall be paid as follows:

(a) to his surviving spouse, provided such spouse has not remarried before making application for payment; or

(b) if there is no surviving spouse, or the spouse has remarried before making such application, then to the serviceman's child or children who shall be living when the payment is made, in equal shares if more than one, and all thereof if only one; or

(c) if there is no surviving spouse who has not remarried and there are no surviving children, the payment shall be made to the parents of the serviceman, or if one of them is deceased, then the whole to the parent who survives, or if both parents are deceased, then no payment shall be made.

(2) The payments provided in this section shall be made only to persons living at the time of payment, and no payment shall be made to the estate of any person.

Section 4. There is a new section to be numbered 77-2304, R.C.M. 1947, which reads as follows:

**77-2304. Application for payment.** All payments provided for in sections 2 [77-2302] and 3 [77-2303] of this law shall be made upon applications made by claimants in the form prescribed by this law, to be filed with the state board of examiners. The board shall pass upon all applications and upon the proof offered in support thereof, and upon the approval of any application by the board it shall file the same with the state auditor, who shall immediately issue to such applicant a warrant upon the general fund in the amount allowed by the board and make personal delivery of such warrant to the applicant, or mail the same to the applicant at the current address shown in the application.

Section 5. There is a new section to be numbered 77-2305, R.C.M. 1947, which reads as follows:

**77-2305. Application by guardian.** In the case of a minor or incompetent person, a claim shall be filed by and payment made to his guardian or his custodian duly appointed by the veterans administration.

Section 6. There is a new section to be numbered 77-2306, R.C.M. 1947, which reads as follows:

**77-2306. Deadline for applications.** All applications for the payment of grants under this law shall be filed on or before July 1, 1976, with the board of examiners or with a county clerk and recorder of any county of this state. Upon receiving any such application, the clerk and recorder shall give the applicant a receipt therefor, stating therein the exact time of such filing, and shall immediately endorse the fact and time of filing upon the application, over his signature and seal, and immediately transmit the application to the board of examiners. Any filing at a place and within the time specified in this section shall preserve the rights of the applicant to the grant, notwithstanding any defect in his application, pro-

vided that any such defects are later corrected under reasonable rules to be adopted by the board of examiners.

Section 7. There is a new section to be numbered 77-2307, R.C.M. 1947, which reads as follows:

**77-2307. Contents of application.** (1) All applications by servicemen shall contain:

- (a) the full name of the applicant;
- (b) the then address of the applicant;
- (c) the date and place of birth of the applicant;
- (d) the name under which the applicant served in the military forces;
- (e) the date of beginning and the date of ending military service;
- (f) the date of beginning and the date of ending military service in the Vietnam area;
- (g) the date and place where applicant was discharged from active service, or if still on active duty, the name of the organization in which he is then serving;
- (h) applicant's residence at the time of entry into military service;
- (i) the selective service office in which applicant was registered;
- (j) whether applicant has received or is entitled to receive an honorarium or similar payment from any other state or territory of the United States, and if so, the amount thereof; and
- (k) such reasonable documentation as the board shall require.

(2) Applications by children or parents of a deceased serviceman shall contain all the information concerning such serviceman as required in an application by such serviceman, so far as obtainable by such applicant, and the necessary facts upon which the applicant claims the right to such payment.

(3) The board of examiners shall cause to be printed an ample supply of application forms, and shall furnish to each clerk and recorder in Montana an adequate supply of such application forms.

(4) Any person who, with intent to defraud, subscribes to any false oath or makes any false representation, either in the application herein provided for or in the proof offered in support thereof, for the purpose of obtaining payment hereunder when he is in fact not entitled to such payment, shall be guilty of the offense of false swearing and punishable accordingly.

Section 8. There is a new section to be numbered 77-2308, R.C.M. 1947, which reads as follows:

**77-2308. Rules and regulations — law to be construed liberally.** The board of examiners shall adopt all necessary rules and regulations for handling applications for the payments herein provided for, and for



the adjudication of questions of fact and of law arising upon such applications, and may accept and consider any form of evidence, including affidavits and other forms of evidence tending to establish claims with reasonable certainty, although not in form admissible in a civil action, it being the intent of this law that it shall be administered liberally to the end that no person entitled to payment hereunder shall be denied it, so far as reasonably possible.

Section 9. There is a new section to be numbered 77-2309, R.C.M. 1947, which reads as follows:

**77-2309. Assistance by state and county officials.** The attorney general, the state director of the veterans' welfare commission, the employees of said commission, and all other state and all county officers shall render without charge all assistance possible to the board of examiners in the administration of this law, and to applicants for payment in the preparation of applications and making proof thereunder.

Section 10. There is a new section to be numbered 77-2310, R.C.M. 1947, which reads as follows:

**77-2310. Right to payment not subject to legal process.** The right to receive payment of the honorarium or adjusted compensation herein provided for shall not be assignable, may not be pledged, mortgaged, or otherwise encumbered, and shall not be subject to attachment or to levy under execution or other judicial process.

Section 11. There is a new section to be numbered 77-2311, R.C.M. 1947, which reads as follows:

**77-2311. Authority for necessary supplies.** The state board of examiners is authorized and directed to procure such printing and office supplies and equipment, and to employ such persons, at such compensation, as shall be determined by the board of examiners to be necessary in order to carry out properly the provisions of this law, and all expenses incurred by the board in the administration of this law shall be paid by the state auditor by warrants drawn upon the general fund.

Approved March 25, 1974

## CHAPTER NO. 289

AN ACT TO REQUIRE MOTOR VEHICLE INSPECTIONS IN THE  
STATE OF MONTANA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is a new section to be numbered 53-1101, R.C.M. 1947, which reads as follows:

**53-1101. Vehicle inspection required.** The state department of justice shall require every vehicle defined by section 53-104 and having a

gross vehicle weight of 8,000 or less and that are licensed for use on the highways of the state currently registered and domiciled in this state, excepting house trailers not operated upon the highways, vehicles granted inspection reciprocity by other jurisdictions, trailers and semitrailers having an unladen weight of less than one thousand five hundred (1,500) pounds, vehicles registered and domiciled in another jurisdiction having a vehicle inspection law, vehicles operated in interstate commerce which are subject to United States department of transportation safety regulations, to be inspected as provided by this act, at an official inspection station as designated by the department.

Section 2. There is a new section to be numbered 53-1102, R.C.M. 1947, which reads as follows:

**53-1102. Times of inspection.** The department shall require vehicles described in section 1 [53-1101] to be inspected at the following times, before the end of the fourth year following the effective date of this act and no less than once every four years thereafter.

Section 3. There is a new section to be numbered 53-1103, R.C.M. 1947, which reads as follows:

**53-1103. Licensing of inspection stations.** The department shall designate and issue licenses for and supply all necessary forms to official inspection stations for the inspection of vehicles as required by this act. Application for a license shall be made upon an official form accompanied by a fee of twenty-five dollars (\$25) and shall only be granted when the department has determined that the garage, service station or shop has met the requirements listed below:

(1) Eligibility:

(a) each applicant must furnish proof that he has proper facilities, proper equipment and be properly qualified or has properly qualified personnel in his employ to accomplish satisfactory inspections in accordance with regulations promulgated by the department;

(b) companies owning ten (10) or more vehicles who have their own garages and repair facilities may apply for an official fleet inspection station license provided the equipment, facilities and personnel meet the requirements set forth in this act. The official inspection station sign shall not be required at fleet inspection stations.

(2) Duration: Licenses once issued are continuously in force at the indicated location until suspended, revoked or ownership changes. All licenses to operate as an official inspection station must be conspicuously posted on the licensed premises at all times.

(3) Operation:

(a) all licensed official inspection stations must be open for business during regular business hours except those licensed to inspect only their own vehicles;

(b) inspections may be made only at the location shown on the official inspection sticker;

(c) fleet inspection stations licensed to inspect vehicles owned, leased or controlled by them are in no event allowed to inspect privately owned vehicles, including those of officers or employees of the company.

Section 4. There is a new section to be numbered 53-1104, R.C.M. 1947, which reads as follows:

**53-1104. Supervision of inspection stations.** The department shall supervise and periodically inspect all licensed official inspection stations, and may revoke, suspend or refuse to issue a license to or applied for by an official inspection station. Any licensee whose license is revoked pursuant to the provisions of this act may make application for relicensing after the expiration of one (1) year from the date of the revocation. A suspension under the provisions of this act shall not exceed six (6) months.

Section 5. There is a new section to be numbered 53-1105, R.C.M. 1947, which reads as follows:

**53-1105. Certification of vehicles.** The person operating an official inspection station shall issue a certificate of inspection and approval upon an official form furnished by the department for a vehicle only upon inspecting the vehicle and determining that the vehicle is in good condition and proper adjustment in accordance with the rules and regulations of the department and minimum applicable federal vehicle safety inspection standards. A record and report shall be made on every inspection and every certificate issued. Those records shall be forwarded to the department at times as the department, by regulation, shall specify. The department shall investigate all conflicting inspection and certification reports and shall resolve disputes arising between inspection stations issuing the conflicting reports.

A certificate of inspection issued in accordance with this section certifies that the inspected vehicle met the minimum standards of inspection at the time of inspection and no other certification of condition by such certificate is expressed or implied.

Section 6. There is a new section to be numbered 53-1106, R.C.M. 1947, which reads as follows:

**53-1106. Inspection fee — additional requirements for certification — handling of vehicle — owner complaints.** The fee for inspection, including the issuance of certificate and approval, shall be nine dollars (\$9). No certificate of inspection and approval shall be issued until the prescribed inspection is completed and the licensee has complied with the provisions of this act.

The inspection certificate shall be placed in or on such vehicle as shall be established by the department.

The department shall make available to each station appropriate report forms on which vehicle owners who receive a certificate of inspection may register complaints regarding the inspection received. Each inspection station shall deliver a copy of this report form to each vehicle owner.

The department shall maintain records on complaints concerning official inspection stations and shall investigate such complaints and take such action as just and proper under the circumstances.

Section 7. There is a new section to be numbered 53-1107, R.C.M. 1947, which reads as follows:

**53-1107. Repairs to substandard vehicles — fee paid to department by inspection stations.** In the event repair or adjustment of any vehicle or its equipment is found necessary upon inspection, the owner of said vehicle may obtain such repair or adjustment at any place he may choose, within fifteen (15) days, but in every event an official certificate of inspection and approval shall be obtained from an official inspection station within fifteen (15) days after the initial inspection and before such vehicle shall be operated upon the highways of this state. The fee shall be collected at the time of the original inspection. No additional fee shall be charged if the vehicle is repaired and returned to the same inspection station within fifteen (15) days.

A fee of one dollar and twenty-five cents (\$1.25) shall be collected from each official inspection station for each certificate of inspection, said fee to be paid into the state highway fund. A refund shall be made, or credit allowed, for unused certificates of inspection, or for certificates lost, mutilated or destroyed, to the extent provided by the department.

Section 8. There is a new section to be numbered 53-1108, R.C.M. 1947, which reads as follows:

**53-1108. Only official inspection stations allowed to advertise.** No person shall in any manner represent any place as an official inspection station unless such station is operated under a valid license issued by the department.

All signs or posters pertaining to the safety inspection program to be used by an official inspection station shall be approved by the department before being posted.

No person other than an official inspection station, an appointed employee of the official inspection station, shall issue a certificate of inspection and approval.

Section 9. There is a new section to be numbered 53-1109, R.C.M. 1947, which reads as follows:

**53-1109. Counterfeiting of certificate prohibited.** No person shall make issue or knowingly use any imitation or counterfeit of an official certificate of inspection and approval.

No person shall display, or cause a permit to be displayed, for any vehicle any certificate of inspection and approval knowing it to be fictitious, or issued for another vehicle, or issued without an inspection being made.

No unauthorized person shall knowingly possess vehicle inspection certificates.

Section 10. There is a new section to be numbered 53-1110, R.C.M. 1947, which reads as follows:

**53-1110. Exemptions.** A motor vehicle which is thirty (30) years and older and is registered as a collectors' item in section 53-106.1 and which is not for general transportation, is exempt from the provisions of this act.

Section 11. There is a new section to be numbered 53-1111, R.C.M. 1947, which reads as follows:

53-1111. **Rule making power granted.** The department is hereby authorized to make all necessary rules and regulations for the administration and enforcement of this act.

Section 12. There is a new section to be numbered 53-1112, R.C.M. 1947, which reads as follows:

53-1112. **Police may verify certification.** Any police officer or examiner who shall exhibit his badge or other sign of authority may stop any vehicle required to be inspected under this act and require the owner or operator to display an official certificate of inspection and approval for the vehicle being operated.

Section 13. There is a new section to be numbered 53-1113, R.C.M. 1947, which reads as follows:

53-1113. **Revocation of registration.** The department may revoke the registration of a vehicle registered in this state and operated on the highways of the state which:

(1) does not carry a current certificate of inspection and approval issued in accordance with this act;

(2) is shown by the inspection to be incapable of being placed in a proper condition to make its use safe on the highway, and for which a certificate of inspection and approval cannot be obtained;

(3) is found to have violated the provisions of section 14 [53-1114] of this act.

Section 14. There is a new section to be numbered 53-1114 R.C.M. 1947, which reads as follows:

53-1114. **Certain acts by vehicle owner misdemeanors.** Any person who refuses to have his vehicle examined, or, after having had it examined, refuses to carry a certificate of inspection and approval, if issued, or who fraudulently obtains a certificate of inspection and approval or who refuses to place his vehicle in proper condition after having had the same examined, or who, in any manner, fails to conform to the provisions of this act, shall be guilty of a misdemeanor.

Section 15. There is a new section to be numbered 53-1115, R.C.M. 1947, which reads as follows:

53-1115. **Certain acts by inspection station misdemeanors.** Willful failure on the part of any inspector or license holder to comply with the provisions of this act shall be a misdemeanor.

Section 16. This act shall be effective on and after January 1, 1975.

Approved March 25, 1974

## CHAPTER NO. 290

AN ACT LEGALIZING SPORTS POOLS; PROVIDING PENALTIES;  
AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is a new section to be numbered 62-727, R.C.M. 1947, which reads as follows:

**62-727. Sports pools defined — rules.** "Sports pools" means a card divided into squares or spaces with the names of the participants in the pool written within such squares or spaces, for which consideration in money is paid by the person playing for each square or space for the chance to win money or other items of value on any sports event wherein the participants in such sports event are natural persons or animals. The card used for recording the pool and upon which the squares or spaces appear shall clearly state in advance of the sale of any chances the number of chances to be sold in that specific pool, the name of the event, the consideration to be paid for each chance and the total amount to be paid to the winners.

No chance to participate in a sports pool may be sold other than upon the premises in which the sports pool is conducted. No individual chance to participate in a sports pool shall be sold for a consideration in excess of one dollar (\$1) and the total amount to be paid to the winners of any individual sports pool shall not exceed the value of one hundred dollars (\$100). The winner of any sports pool shall receive a one hundred per cent (100%) payout of the value of the sports pool.

Section 2. There is a new section to be numbered 62-728, R.C.M. 1947, which reads as follows:

**62-728. Transportation exempt from federal law.** The transportation of sports pool cards is hereby declared exempt from the provisions of 15 U.S.C. 1172.

Section 3. There is a new section to be numbered 62-729, R.C.M. 1947, which reads as follows:

**62-729. Gambling on cash basis.** (1) In every gambling game conducted pursuant to any gambling law of the state the consideration paid for the chance to play shall be strictly cash. Every participant must present the money with which he intends to play the gambling game at the time the game is played. No check, credit card, note, I.O.U. or other evidence of indebtedness shall be offered or accepted as part of the price of participating in a gambling game or as payment of a gambling debt.

(2) No action based on a gambling debt is maintainable in a court of this state.

Section 4. There is a new section to be numbered 62-730, R.C.M. 1947, which reads as follows:

**62-730. Minors may not participate.** No person under the age of eighteen (18) years shall be permitted to participate in any game or games of chance held, operated or conducted pursuant to this act.

Section 5. There is a new section to be numbered 62-731, R.C.M. 1947, which reads as follows:

**62-731. Cheating unlawful.** It shall be unlawful to conduct or partici-

pate in a gambling game authorized by this act or any other gambling law in any manner which results in cheating, misrepresentation or other such disreputable tactics which distract from a fair and equal chance for all participants or which otherwise affects the outcome of the gambling game.

Section 6. There is a new section to be numbered 62-732, R.C.M. 1947, which reads as follows:

**62-732. Peace officers to enforce act.** It shall be the duty of all peace officers to enforce the provisions of this act and to arrest and complain against any person violating any provision of this act. It shall be the duty of the county attorney of the respective county to prosecute all violations of this act in the manner and form as is provided by law and it shall be a misdemeanor for any such person or persons to knowingly fail to perform his or her duty under this section.

Section 7. There is a new section to be numbered 62-733, R.C.M. 1947, which reads as follows:

**62-733. Penalty for violation of act.** Every person who willfully violates or who procures, aids or abets in the willful violation of this act, shall be deemed guilty of a misdemeanor and upon conviction, shall be punished by a fine of not more than one thousand dollars (\$1,000) or imprisonment in the county jail for not more than three (3) months, or both.

Section 8. There is a new section to be numbered 62-734, R.C.M. 1947, which reads as follows:

**62-734. Prior law still in effect.** To the extent that they are not specifically superceded by the provisions of this act or any other gambling law, the provisions of sections 94-8-401 through 94-8-431, R.C.M. 1947, remain in effect.

Section 9. There is a new section to be numbered 62-735, R.C.M. 1947, which reads as follows:

**62-735. Venue.** Venue for all violations of this act is in the district court.

Section 10. There is a new section to be numbered 62-736, R.C.M. 1947, which reads as follows:

**62-736. Severability.** If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Section 11. **Effective date.** This act is effective on its passage and approval.

Approved March 25, 1974

## CHAPTER NO. 291

AN ACT AMENDING SECTION 11-3819, R.C.M. 1947; PROVIDING

THAT MEMBERS OF COUNTY, CITY, OR CITY-COUNTY PLANNING BOARDS MAY BE REIMBURSED FOR TRANSPORTATION AND ACTUAL EXPENSES INCURRED IN ATTENDING PLANNING BOARD MEETINGS.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 11-3819, R.C.M. 1947, is amended to read as follows:

"11-3819. **Members not to receive salary.** The members of planning boards shall receive no salary for *serving* on the planning board, *but may be reimbursed from local funds for transportation and actual expenses up to but not exceeding state transportation reimbursements and allowable expenses incurred in attending planning board meetings.*"

Approved March 25, 1974

## CHAPTER NO. 292

AN ACT REVISING THE RULES FOR THE DISSEMINATION OF PROCEEDINGS OF THE LEGISLATURE AND AMENDING SECTIONS 43-901, 43-902, 43-903, AND 43-904, R.C.M. 1947.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 43-901, R.C.M. 1947, is amended to read as follows:

"43-901. **Definitions.** For the purposes of this act, the following definitions are adopted.

1. "Person" shall include any person, firm, corporation or association.
2. "Proceedings of the legislature" shall include status sheets, daily journal, reproduced bills, reproduced resolutions, reproduced memorials, printed bills, printed resolutions and printed memorials and amendments thereto.
3. "One complete set" is one copy of each item of the proceedings of a session, regular or special, of the legislature."

Section 2. Section 43-902, R.C.M. 1947, is amended to read as follows:

"43-902. **Schedule of fees.** (a) Any person desiring to receive one complete set of the proceedings of a regular session of the legislature shall pay to the secretary of state the amount prescribed in the joint legislative rules. Upon receipt of such money the secretary of state shall transmit the name of said person to the executive director of the legislative council, who shall supply such person with a complete set of the proceedings of the legislature. Any person desiring to receive more than one set of the proceedings of the legislature shall pay the session fee for each additional set.



(b) In addition to the fee for each complete set of the proceedings specified by subsection (a) of this section, any person who requests that a set of the proceedings be mailed shall pay an additional fee to the secretary of state for each complete set that is mailed of seventy-five dollars (\$75) if a person requests that the proceedings be mailed ordinary mail and one hundred dollars (\$100) if a person requests that the proceedings be mailed air mail.

(c) Any person desiring to receive single copies of mimeographed bills, mimeographed resolutions, printed bills, printed resolutions, or amendments thereto shall *purchase them from the legislative services division of the legislative council for a price varying with the length of the document as prescribed in the joint rules.*

(d) Any person desiring to receive single copies of status sheets or status of proceedings *may purchase them from the legislative services division of the legislative council for a price per copy as prescribed in the joint rules. A person may subscribe to receive daily copies of the status sheets or status of proceedings by mail, for a fee covering the actual costs of such service which the legislative council may fix.*

(e) The *executive director of the legislative council* shall account for all funds collected under this section and transmit such funds to the treasurer of the state of Montana, who shall credit them to the general fund."

Section 3. Section 43-903, R.C.M. 1947, is amended to read as follows:

"43-903. **Exclusions.** Representatives of *general circulation newspapers*, radio, and television who shall have first registered with the secretary of state shall be exempt from the provisions of section 43-902 and shall receive one complete set of the proceedings of the legislature without charge."

Section 4. Section 43-904, R.C.M. 1947, is amended to read as follows:

"43-904. **Exemptions—public officials.** All elected state officials, state department heads, *the state law library*, and county clerks and recorders shall be exempted from the provisions of section 43-902."

Approved March 25, 1974

## CHAPTER NO. 293

AN ACT LEGALIZING CERTAIN CARD GAMES; DEFINING TERMS; PERMITTING LOCAL LICENSING AND REGULATION; PROVIDING PENALTIES AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is a new section to be numbered 62-701, R.C.M. 1947, which reads as follows:

62-701. **Short title.** This act may be cited as the "Montana Card Games Act."

Section 2. There is a new section to be numbered 62-702, R.C.M. 1947, which reads as follows:

62-702. **Definitions.** As used in this act and unless the context otherwise requires, the following terms or phrases have the following meanings:

(1) "Authorized card game" means any card game permitted by this act.

(2) "Card game" means any game played with cards for which the prize is money or any item of value.

Section 3. There is a new section to be numbered 62-703, R.C.M. 1947, which reads as follows:

62-703. **Unauthorized card games prohibited.** (1) It is unlawful for any person to conduct or participate in any card game or make any tables available for the playing of card games except those card games authorized by this act.

(2) The card games authorized by this act are and are limited to the card games known as bridge, cribbage, hearts, panguingue, pinochle, pitch, rummy, whist, solo, and poker.

Section 4. There is a new section to be numbered 62-704, R.C.M. 1947, which reads as follows:

62-704. **Prizes not to exceed one hundred dollars (\$100).** No prize for any individual game shall exceed the value of one hundred dollars (\$100). Games shall not be combined in any manner so as to increase the value of the ultimate prize awarded.

Section 5. There is a new section to be numbered 62-705, R.C.M. 1947, which reads as follows:

62-705. **Rules of play to be posted — rake-off approved.** Rules governing the conduct of each game shall be prominently posted on the premises of any licensed establishment where such game is conducted. Such rules shall include notice of the maximum percentage rake-off if any, and shall require that the person taking the rake-off do so in an obvious manner and only after announcing the amount of each rake-off, which shall only be taken at the conclusion of each game when the winner of each individual pot has been determined.

Section 6. There is a new section to be numbered 62-706, R.C.M. 1947, which reads as follows:

62-706. **Gambling on cash basis.** (1) In every gambling game conducted pursuant to any gambling law of the state the consideration paid for the chance to play shall be strictly cash. Every participant must present the money with which he intends to play the gambling game at the time the game is played. No check, credit card, note, I.O.U. or other evidence of indebtedness shall be offered or accepted as part of the price of participating in a gambling game or as payment of a gambling debt.

(2) No action based on a gambling debt is maintainable in a court of this state.

Section 7. There is a new section to be numbered 62-707, R.C.M. 1947, which reads as follows:

**62-707. Local governing bodies may issue licenses.** (1) Any city, town or county may issue licenses for the gambling games provided for in this act to be conducted on premises which have been licensed for the sale of liquor, beer, food, cigarettes or any other consumable products. Within the cities or towns, such licenses may be issued by the city or town council or commission. Licenses for games conducted on premises outside the limits of any city or town may be issued by the county commissioners of the respective counties. When a license has been required by any city, town or county, no gambling game as provided for in this act shall be conducted on any premises which have been licensed for the sale of liquor, beer, food, cigarettes or any other consumable product without such license having first been obtained.

(2) Any governing body may charge an annual license fee for each license so issued under this act, which license fee, if any, shall expire on June 30 of each year, and such fee shall be prorated.

(3) Any license issued pursuant to this act shall be deemed to be a revocable privilege, and no holder thereof shall acquire any vested rights therein or thereunder.

Section 8. There is a new section to be numbered 62-708, R.C.M. 1947, which reads as follows:

**62-708. Governing body may establish regulations.** The governing body authorized to issue gambling licenses pursuant to this act shall have the authority to establish by ordinance or resolution, regulations governing the qualifications for and the issuing, suspension and revocation of such gambling licenses. These regulations, in addition to any other requirements, shall provide that no license shall be issued to:

1. A person who has been convicted of being the keeper or is keeping a house of ill fame.

2. A person who has been convicted of pandering or other crime or misdemeanor opposed to decency and morality, under the laws of the federal government or any state of the United States.

3. A person whose license issued under this act has been revoked for cause.

4. A person who at the time of application for renewal of any license issued hereunder would not be eligible for such license upon a first application.

5. A person who is not a citizen of the United States and who has not been a resident of the state of Montana for at least one (1) year immediately preceding the filing of the application for license.

6. A person who is not the owner and operator of the business. Additional regulations may also be adopted for the purpose of the protection

of the public health, welfare and safety of the citizens of the state of Montana and to assure compliance with the intent of this act.

Section 9. There is a new section to be numbered 62-709, R.C.M. 1947, which reads as follows:

**62-709. Minors may not participate.** No person under the age of eighteen (18) years shall be permitted to participate in any game or games of chance held, operated or conducted pursuant to this act.

Section 10. There is a new section to be numbered 62-710, R.C.M. 1947, which reads as follows:

**62-710. Cheating unlawful.** It shall be unlawful to conduct or participate in a gambling game authorized by this act or any other gambling law in any manner which results in cheating, misrepresentation or other such disreputable tactics which distract from a fair and equal chance for all participants or which otherwise affects the outcome of the gambling game.

Section 11. There is a new section to be numbered 62-711, R.C.M. 1947, which reads as follows:

**62-711. Peace officers to enforce act.** It shall be the duty of all peace officers to enforce the provisions of this act and to arrest and complain against any person violating any provision of this act. It shall be the duty of the county attorney of the respective county to prosecute all violations of this act in the manner and form as is provided by law and it shall be a misdemeanor for any such person or persons to knowingly fail to perform his or her duty under this section.

Section 12. There is a new section to be numbered 62-712, R.C.M. 1947, which reads as follows:

**62-712. Penalty for violation of act.** Every person who willfully violates or who procures, aids or abets in the willful violation of this act or any ordinance, resolution or regulation adopted pursuant thereto shall be deemed guilty of a misdemeanor and upon conviction, shall be punished by a fine of not more than one thousand dollars (\$1,000) or imprisonment in the county jail for not more than three (3) months, or both.

Section 13. There is a new section to be numbered 62-713, R.C.M. 1947, which reads as follows:

**62-713. Venue.** Venue for all cases involving violations of this act is in the district court.

Section 14. There is a new section to be numbered 62-714, R.C.M. 1947, which reads as follows:

**62-714. Prior laws still in effect.** To the extent that they are not specifically superseded by provisions of this act or any other gambling law, the provisions of sections 94-8-401 through 94-8-431, R.C.M. 1947, remain in effect.

Section 15. **Severability.** If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity

shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Section 16. **Effective date.** This act is effective on its passage and approval.

Approved March 25, 1974

## CHAPTER NO. 294

AN ACT MAKING LAWFUL THE CONDUCTING OF GAMES OF CHANCE COMMONLY KNOWN AS BINGO AND RAFFLES; DEFINING TERMS; PERMITTING LOCAL LICENSING AND REGULATION; PROVIDING PENALTIES; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is a new section to be numbered 62-715, R.C.M. 1947, which reads as follows:

62-715. **Short title.** This act shall be known and may be cited and referred to as the "Bingo and Raffles Law."

Section 2. There is a new section to be numbered 62-716, R.C.M. 1947, which reads as follows:

62-716. **Definitions.** As used in this act, unless the context otherwise requires, the following terms or phrases shall have the following meanings:

(1) "Game of chance" means the specific kind of game of chance commonly known as:

(a) "bingo," in which prizes are awarded on the basis of designated numbers or symbols on a card which conform to numbers or symbols selected at random; and such prizes must be in tangible personal property only and not in money, cash, stocks, bonds, evidences of indebtedness, or other intangible personal property and must not exceed the value of one hundred dollars (\$100) for each individual bingo award. The price for an individual bingo card shall not exceed fifty cents (\$.50). It shall be unlawful to, in any manner, combine any awards so as to increase the ultimate value of such award;

(b) "raffles," which are conducted by drawing for prizes. Prizes must be in tangible personal property only and not in money, cash, stocks, bonds, evidences of indebtedness, or other intangible personal property and must not exceed the value of one thousand dollars (\$1,000) for each individual raffle card. It shall be unlawful to, in any manner, combine any awards so as to increase the ultimate value of such award.

(2) "Equipment" means:

(a) with respect to bingo, the receptacle and numbered objects drawn from it, the master board upon which such objects are placed as drawn, the cards or sheets bearing numbers or other designations to be covered and the objects used to cover them, the boards or signs, however operated, used to announce or display the numbers or designations as they are drawn, public address system, and all other articles essential to the operation, conduct and playing of bingo; or

(b) with respect to raffles, the implements, devices and machines designed, intended or used for the conduct of raffles and the identification of the winning number or unit and the ticket or other evidence of right to participate in raffles.

Section 3. There is a new section to be numbered 62-717, R.C.M. 1947, which reads as follows:

**62-717. Restrictions on bingo and raffles.** In the playing of bingo, no person who is not physically present on the premises where the game is actually conducted shall be allowed to participate as a player in the game. Raffles authorized by this act shall be restricted to events and participants within the geographic confines of the state of Montana.

Section 4. There is a new section to be numbered 62-718, R.C.M. 1947, which reads as follows:

**62-718. No raffle drawing before thirty (30) days or after ninety (90) days.** No raffle drawing may be held nor winner determined unless the chances to participate have been offered for sale for at least thirty (30) days prior to the drawing. The drawing shall take place no later than ninety (90) days after the first offering for sale of chances to participate.

Section 5. There is a new section to be numbered 62-719, R.C.M. 1947, which reads as follows:

**62-719. Local governing bodies may issue licenses.** (1) Any city, town or county may issue licenses for the gambling games provided for in this act to be conducted on premises which have been licensed for the sale of liquor, beer, food, cigarettes or any other consumable products. Within the cities or towns, such licenses may be issued by the city or town council or commission. Licenses for games conducted on premises outside the limits of any city or town may be issued by the county commissioners of the respective counties. When a license has been required by any city, town or county, no gambling game as provided for in this act shall be conducted on any premises which have been licensed for the sale of liquor, beer, food, cigarettes or any other consumable product without such license having first been obtained.

(2) Any governing body may charge an annual license fee for each license so issued under this act, which license fee, if any shall expire on June 30 of each year, and such fee shall be prorated.

(3) Any license issued pursuant to this act shall be deemed to be a revocable privilege, and no holder thereof shall acquire any vested rights therein or thereunder.

Section 6. There is a new section to be numbered 62-720, R.C.M. 1947, which reads as follows:

**62-720. Governing body may establish regulations.** The governing body authorized to issue gambling licenses pursuant to this act shall have the authority to establish by ordinance or resolution regulations governing the qualifications for and the issuing, suspension and revocation of such gambling licenses. These regulations, in addition to any other requirements, shall provide that no license shall be issued to:

(1) A person who has been convicted of being the keeper or is keeping a house of ill fame.

(2) A person who has been convicted of pandering or other crime or misdemeanor opposed to decency and morality, under the laws of the federal government or any state of the United States.

(3) A person whose license issued under this act has been revoked for cause.

(4) A person who at the time of application for renewal of any license issued hereunder would not be eligible for such license upon a first application.

(5) A person who is not a citizen of the United States and who has not been a resident of the state of Montana for at least one (1) year immediately preceding the filing of the application for license.

(6) A person who is not the owner and operator of the business. Additional regulations may also be adopted for the purpose of the protection of the public health, welfare and safety of the citizens of the state of Montana and to assure compliance with the intent of this act.

Section 7. There is a new section to be numbered 62-721, R.C.M. 1947, which reads as follows:

**62-721. Minors not to participate.** No person under the age of eighteen (18) years shall be permitted to participate in any game or games of chance held, operated or conducted pursuant to this act.

Section 8. There is a new section to be numbered 62-722, R.C.M. 1947, which reads as follows:

**62-722. Peace officers to enforce act.** It shall be the duty of all peace officers to enforce the provisions of this act and to arrest and complain against any person violating any provision of this act. It shall be the duty of the county attorney of the respective county to prosecute all violations of this act in the manner and form as is provided by law and it shall be a misdemeanor for any such person or persons to knowingly fail to perform his or her duty under this section.

Section 9. There is a new section to be numbered 62-723, R.C.M. 1947, which reads as follows:

**62-723. Penalty for violation of act.** Every person who willfully violates or who procures, aids or abets in the willful violation of this act or any ordinance, resolution or regulation adopted pursuant thereto shall be deemed guilty of a misdemeanor and upon conviction, shall be punished by a fine of not more than one thousand dollars (\$1,000) or imprisonment in the county jail for not more than three (3) months, or both.

Section 10. There is a new section to be numbered 62-724, R.C.M. 1947, which reads as follows:

**62-724. Gambling on cash basis.** (1) In every gambling game conducted pursuant to any gambling law of the state the consideration paid for the chance to play shall be strictly cash. Every participant must present the money with which he intends to play the gambling game at the time the game is played. No check, credit card, note, I.O.U. or other evidence of indebtedness shall be offered or accepted as part of the price of participation in a gambling game or as payment of a gambling debt.

(2) No action based on a gambling debt is maintainable in a court of this state.

Section 11. There is a new section to be numbered 62-725, R.C.M. 1947, which reads as follows:

**62-725. Cheating unlawful.** It shall be unlawful to conduct or participate in a gambling game authorized by this act or any other gambling law in any manner which results in cheating, misrepresentation or other such disreputable tactics which distract from a fair and equal chance for all participants or which otherwise affects the outcome of the gambling game.

Section 12. There is a new section to be numbered 62-726, R.C.M. 1947, which reads as follows:

**62-726. Bingo and raffles exempt from prior law.** Bingo and raffles as in this act authorized are exempt from the provisions of sections 94-8-301 through 94-8-311, R.C.M. 1947.

Section 13. **Severability.** It is the intent of the legislature that if a part of this act is invalid, all valid parts severable from the invalid parts remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 14. **Effective date.** This act is effective on its passage and approval.

Approved March 25, 1974

## CHAPTER NO. 295

AN ACT AMENDING SECTION 53-438, R.C.M. 1947, TO PROVIDE THAT A MOTOR VEHICLE INSURANCE PREMIUM MAY NOT BE INCREASED DURING THE TERM OF THE POLICY.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 53-438, R.C.M. 1947, is amended to read as follows:

**"53-438. Motor vehicle liability policy defined.** (a) A "motor vehicle



liability policy" as said term is used in this act shall mean an owner's or operator's policy of liability insurance, certified as provided in section 53-436 or section 53-437 as proof of financial responsibility and issued, except as otherwise provided in section 53-437, by an insurance carrier duly authorized to transact business in this state, to or for the benefit of the person named therein as insured.

(b) Such owner's policy of liability insurance:

1. shall designate by explicit description or by appropriate reference all motor vehicles with respect to which coverage is thereby to be granted; and

2. shall insure the person named therein and any other person, as insured, using any such motor vehicle or motor vehicles with the express or implied permission of such named insured, against loss from the liability imposed by law for damages arising out of the ownership, maintenance or use of such motor vehicle or motor vehicles within the United States of America or the Dominion of Canada, subject to limits exclusive of interest and costs, with respect to each such motor vehicle, as follows: ten thousand dollars (\$10,000) because of bodily injury to or death of one person in any one accident and subject to said limit for one person, twenty thousand dollars (\$20,000) because of bodily injury to or death of two or more persons in any one accident, and five thousand dollars (\$5,000) because of injury to or destruction of property of others in any one accident.

(c) Such operator's policy of liability insurance shall insure the person named as insured therein against loss from the liability imposed upon him by law for damages arising out of the use by him of any motor vehicle not owned by him, within the same territorial limits and subject to the same limits of liability as are set forth above with respect to an owner's policy of liability insurance.

(d) Such motor vehicle liability policy shall state the name and address of the named insured, the coverage afforded by the policy, the premium charged therefor, the policy period and the limits of liability, and shall contain an agreement or be endorsed that insurance is provided thereunder in accordance with the coverage defined in this act as respects bodily injury and death or property damage, or both, and is subject to all the provisions of this act.

(e) Such motor vehicle liability policy need not insure any liability under any workmen's compensation law nor any liability on account of bodily injury to or death of an employee of the insured while engaged in the employment, other than domestic, of the insured, or while engaged in the operation, maintenance or repair of any such motor vehicle nor any liability for damage to property owned by, rented to, in charge of or transported by the insured.

(f) Every motor vehicle liability policy shall be subject to the following provisions which need not be contained therein: 1. the liability of the insurance carrier with respect to the insurance required by this act shall become absolute whenever injury or damage covered by said motor vehicle liability policy occurs; said policy may not be canceled or annulled as to

such liability by any agreement between the insurance carrier and the insured after the occurrence of the injury or damage; no statement made by the insured or on his behalf and no violation of said policy shall defeat or void said policy;

2. the satisfaction by the insured of a judgment for such injury or damage shall not be a condition precedent to the right or duty of the insurance carrier to make payment on account of such injury or damage;

3. the insurance carrier shall have the right to settle any claim covered by the policy, and if such settlement is made in good faith, the amount thereof shall be deductible from the limits of liability specified in subdivision 2 of subsection (b) of this section;

4. the policy, the written application therefor, if any, and any rider or endorsement which does not conflict with the provisions of the act shall constitute the entire contract between the parties.

(g) No motor vehicle policy shall be subject to cancellation, termination, or premium increase, due to injury or damage incurred by the insured or operator unless the insured or operator be found to have violated a traffic law or ordinance of the state or a city, be found negligent or contributorily negligent in a court of law, or by the arbitration proceedings contained in chapter 201 of Title 93 R.C.M. 1947, or pays damages to another party whether by settlement or otherwise. *In no event may a premium be increased during the term of the policy unless there is a change in exposure.*

(h) Any policy which grants the coverage required for a motor vehicle liability policy may also grant any lawful coverage in excess of or in addition to the coverage specified for a motor vehicle liability policy and such excess or additional coverage shall not be subject to the provisions of this act. With respect to a policy which grants such excess or additional coverage the term "motor vehicle liability policy" shall apply only to that part of the coverage which is required by this section.

(i) Any motor vehicle liability policy may provide that the insured shall reimburse the insurance carrier for any payment the insurance carrier would not have been obligated to make under the terms of the policy except for the provisions of this act.

(j) Any motor vehicle liability policy may provide for the prorating of the insurance thereunder with other valid and collectible insurance.

(k) The requirements for a motor vehicle liability policy may be fulfilled by the policies of one or more insurance carriers which policies together meet such requirements.

(l) Any binder issued pending the issuance of a motor vehicle liability policy shall be deemed to fulfill the requirements for such a policy.

(m) A reduced limits endorsement shall not be issued by any company to be attached to any policy issued in compliance with this section."

Approved March 25, 1974

## CHAPTER NO. 296

### AN ACT REGULATING CERTAIN POSTSECONDARY EDUCATIONAL

INSTITUTIONS, AND PROVIDING PENALTIES; AND PROVIDING  
AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is a new section to be numbered 75-9201, R.C.M. 1947, which reads as follows:

75-9201. **Legislative purpose.** It is the policy of this state to encourage and enable its citizens to obtain and receive an education commensurate with their abilities and desires. It is recognized that proprietary institutions offering postsecondary educational, vocational and professional instruction perform a useful and necessary service to the citizens of the state in achieving this objective. It is found that certain institutions have either by unscrupulous, unfair and deceptive practices or through substandard instruction deprived the citizens of this state of educational opportunity and subjected them to financial loss. The actions of such institutions also reflect unfavorably upon the reputable proprietary postsecondary institutions which are in the great majority. Thus it is the purpose of this act to provide for the protection, education and welfare of the citizens of this state.

Section 2. There is a new section to be numbered 75-9202, R.C.M. 1947, which reads as follows:

75-9202. **Definitions.** As used in this act, unless the context clearly indicates otherwise:

(1) "Education or educational services" means a class, course or program of training, instruction or study.

(2) "Postsecondary education" means the education or educational services offered to persons who have completed or terminated their secondary education or who are beyond the age of compulsory school attendance for the attainment of academic, professional or vocational objectives.

(3) "Educational credential" means a degree, diploma, certificate, transcript, report, document, letters of designation, marks, appellations, series of letters, numbers or words which signify, purport or are generally taken to mean enrollment, attendance, progress or satisfactory completion of the requirements or prerequisites for education through a postsecondary educational institution.

(4) "Institution" means an academic, vocational, technical, home study, business, professional or other school, college or university, or any person, association or corporation offering educational credentials or educational services but does not include any institution established and maintained under the laws of this state, another state or the government of the United States at the public expense.

(5) "Agent" means any person owning any interest in, employed by or representing a postsecondary educational institution in this or another state who, by solicitation in any form made in this state, seeks to enroll

or enrolls a resident of this state in such postsecondary institution, or who offers to award educational credentials on behalf of such institution for remuneration, or who holds himself out to the residents of this state as representing a postsecondary institution for any such purpose.

(6) "Department" means the department of business regulation.

(7) "License" means written approval issued by the department to operate or to contract to operate a postsecondary institution in this state.

(8) "Permit" means written approval issued by the department to any person to act as an agent for a postsecondary educational institution.

(9) "Grant" means sell, award, confer, bestow or give.

(10) "Offer" means, in addition to its usual meaning, to advertise, publicize, solicit or encourage any person, directly or indirectly, in any form, to perform the act described.

(11) "Operate" means to establish and maintain any facility in this state for the purpose described and includes a contract with any person, association or corporation to establish and maintain such facility.

(12) "Application" means either an application for the initial issuance of a license or permit or for the renewal of a license or permit.

Section 3. There is a new section to be numbered 75-9203, R.C.M. 1947, which reads as follows:

75-9203. **Exemptions.** The following are exempt from the provisions of this act:

(1) institutions accredited by a national or regional accrediting agency recognized by either the board of public education or the board of regents of higher education and notification of such recognition having been given to the department by either board;

(2) education sponsored by a trade, business, professional or fraternal organization solely for the membership of the organization or offered without the payment of fees;

(3) avocational or recreational education and institutions offering such education exclusively;

(4) education offered by charitable or religious institutions, organizations or agencies unless such education is offered as leading toward educational credentials;

(5) institutions possessing a valid certificate issued by the federal aviation agency;

(6) schools of cosmetology possessing a valid certificate of registration issued under the provisions of Chapter 8 of Title 66.

Section 4. There is a new section to be numbered 75-9204, R.C.M. 1947, which reads as follows:

75-9204. **Administration.** The department shall administer this act. To effect the purposes of this act, the department may request from any

agency of the state, and every agency shall provide, such information as will enable the department to exercise properly its powers and perform its duties. Nothing herein shall be construed to interfere with the purpose and function of any agency of the state.

Section 5. There is a new section to be numbered 75-9205, R.C.M. 1947, which reads as follows:

**75-9205. Advisory council** — (1) there is created an advisory council. The council is composed of five (5) members appointed by the governor and two (2) ex officio members. Two (2) members shall represent the Montana Proprietary School Association, one (1) member shall represent the advisory council for vocational education, one (1) member shall represent the Montana personnel and guidance association, and one (1) member from the public at large who has no connection with education. The ex officio members shall be the superintendent of public instruction and the commissioner of higher education. Members of the council shall serve for five (5) years, except that the initial appointments shall be one (1) for three (3) years, two (2) for four (4) years, and two (2) for five (5) years.

(2) The council shall advise the department of policies, rules, regulations and procedures necessary for carrying out the provisions of this act.

(3) The council's organization, meetings, quorum and compensation are as provided in section 82A-110.

Section 6. There is a new section to be numbered 75-9206, R.C.M. 1947, which reads as follows:

**75-9206. Powers and duties of the department.** To administer this act, the department shall have the following powers and duties:

(1) to establish minimum criteria in consultation with the commissioner of higher education conforming to the minimum standards in section 7 [75-9207] of this act which applicants for a license or permit shall satisfy before a license or permit shall be issued, provided the requirements of the Administrative Procedure Act for rule-making procedures have been complied with;

(2) to receive, to investigate as it may deem necessary, and to act upon applications for a license or permit;

(3) to maintain a list of licensed institutions, of persons possessing permits and of accrediting agencies recognized under subsection (1) of section 3 [75-9203] of this act, provided that an institution and its agent exempt from this act may be included in such list upon the filing of an affidavit of exemption;

(4) to negotiate and enter into reciprocal interstate agreements with like agencies in other states if such agreements are or will affect the purposes of this act; provided, that nothing contained in such agreement shall be construed as limiting the powers and duties of the department with respect to investigating or acting upon any application for a license, or for a permit or with respect to the enforcement of any provision of this act or regulations adopted hereunder;

(5) to receive and cause to be maintained for a reasonable length of time not less than ten (10) years, copies of academic records pursuant to section 18 [75-9218] of this act;

(6) to establish with the advice of the advisory council rules, regulations and procedures necessary for the implementation of this act which, shall have the force of law; provided the requirements of the Montana Administrative Procedure Act for rule making procedures have been complied with, and to hold hearings as it may deem advisable in developing such rules, regulations and procedures or to aid in any investigation or inquiry; and

(7) to investigate as it may deem necessary, on its own motion or on the filing of a verified complaint filed with it, any institution or person subject to or reasonably believed by the department to be subject to the provisions of this act; to subpoena any persons or documents pertaining to such investigation, which subpoenas shall be enforceable in a district court of this state; to require answers in writing under oath to questions or interrogatories propounded by the department; and to administer an oath or affirmation to any person in connection with any investigation.

Section 7. There is a new section to be numbered 75-9207, R.C.M. 1947, which reads as follows:

**75-9207. Minimum standards.** (1) In establishing the criteria required by section 6 [75-9206] of this act, the department shall observe and shall require compliance with the following minimum standards:

(a) postsecondary educational institution must be maintained and operated, or, in the case of a new institution, it must demonstrate that it can be maintained and operated, in compliance with the following minimum standards:

(i) that the quality and content of each course or program of instruction, training, or study are such as may reasonably and adequately achieve the stated objective for which the course or program is offered;

(ii) that the institution has adequate space, equipment, instructional materials and personnel to provide education of good quality;

(iii) that the education and experience qualifications of directors, administrators, supervisors, and instructors are such as may reasonably insure that the students will receive education consistent with the objectives of the course or program of study;

(iv) that the institution provides students and other interested persons with a catalog or brochure containing information describing the programs offered, program objectives, length of program, schedule of tuition, fees and all other charges and expenses necessary for completion of the course of study, cancellation and refund policies, and such other material facts concerning the institution and program or course of instruction as are reasonably likely to affect the decision of the student to enroll therein, together with any other disclosures required by the department; and that such information is provided to prospective students prior to enrollment;

(v) that upon satisfactory completion of training, the student is given

appropriate educational credentials by the institution, indicating that the course or courses of instruction or study have been satisfactorily completed;

(vi) that adequate records are maintained by the institution to show attendance, programs, or grades, and that satisfactory standards are enforced relating to attendance, progress, and performance;

(vii) that the institution is maintained and operated in compliance with all pertinent ordinances and laws relating to the safety and health of all persons upon the premises;

(viii) that the institution is financially sound and capable of fulfilling its commitments to students;

(ix) that neither the institution nor its agents engage in advertising, sales, collection, credit, or other practices of any kind which are false, deceptive, misleading, or unfair;

(x) that the chief executive officer, trustees, directors, owners, administrators, supervisors, staff, and instructors are of good reputation and character; and

(xi) that the institution has a fair and equitable cancellation and refund policy.

(b) an applicant for a permit to act as agent shall be an individual of good reputation and character and shall represent only a postsecondary educational institution which meets the minimum standards established in this section and the criteria established under section 6 [75-9206] of this act.

(c) no post secondary educational institution may use the term "university" or "college" without authorization to do so from the department in consultation with the commissioner of higher education; provided that any institution subject to this act located within this state which used either term on January 1, 1974 may continue to do so by filing an affidavit to that effect with the department prior to January 1, 1975.

(2) Accreditation by national or regional accrediting agencies recognized by the United States Office of Education may be accepted by the department as evidence of compliance with the minimum standards established hereunder and the criteria established under section 6 [75-9206] of this act; provided, the department, after conferring with the commissioner of higher education, may require such further evidence and make such further investigation as in its judgment may be necessary. Accreditation by a recognized, specialized accrediting agency may be accepted as evidence of such compliance only as to the portion or program of an institution accredited by such agency if the institution as a whole is not accredited.

Section 8. There is a new section to be numbered 75-9208, R.C.M. 1947, which reads as follows:

75-9208. **Prohibition.** No person, group, association or corporation, alone or in concert with others, shall:

(1) operate in this state a postsecondary educational institution unless the institution is exempt from the provisions of this act or is licensed by the department;

(2) offer instruction in, enrollment in or grant of educational credentials as or through an agent by a postsecondary educational institution not exempted from this act whether within or without the state unless the agent possesses a currently valid permit as required by this act;

(3) accept or receive contracts or applications for enrollment from an agent unless the agent possesses a currently valid permit as required by this act;

(4) offer education or educational services or, educate or provide educational service, offer to enroll or enroll, contract or offer to contract with any person for such purpose, or offer to grant, grant or contract with any person for that purpose in this state unless the person, group, association or corporation complies with the minimum standards in section 7 [75-9207] of this act, the criteria established by the department and the rules and regulations adopted by the department;

(5) act as an agent for a postsecondary educational institution unless currently possessing a valid permit from the department.

Section 9. There is a new section to be numbered 75-9209, R.C.M. 1947, which reads as follows:

75-9209. **License.** (1) Each postsecondary educational institution not exempted from this act intending to operate or presently operating in this state shall apply to the department for a license to operate. Application shall be made on forms prescribed by the department. Each application shall be accompanied by the most recent catalog or brochure published or intended to be published by the institution. The application also shall be accompanied by evidence of payment of the fees required by this act.

(2) After review of the application and any further information required by the department, any investigation of the application which the department may deem necessary or appropriate and evidence of a surety bond as required by this act, the department shall either issue or not issue a license to operate a postsecondary educational institution. The license shall be nontransferable and may be upon such terms and conditions as the department may require.

(3) The license shall be in a form prescribed by the department and shall state in a clear and conspicuous manner at least the following information:

- (a) date of issuance, effective date and date of expiration;
- (b) the name and address of the institution licensed;
- (c) the authority for and conditions of approval, and;
- (d) any terms or conditions required by the department.

(4) No license shall be valid for more than two (2) years and may be valid for a lesser period of time.



Section 10. There is a new section to be numbered 75-9210, R.C.M. 1947, which reads as follows:

75-9210. **Permit.** (1) Each person intending to act in this state as an agent for a postsecondary institution not exempt from the provisions of this act shall make application to the department. Application shall be made on forms prescribed by the department. Each application shall be accompanied by evidence of payment of the fees required by this act and the sworn affidavits of three (3) residents of this state as to the good character and reputation of the applicant, and shall show the name and address of the institution which the applicant intends to represent.

(2) In the event the applicant intends to represent an institution not licensed to operate in this state, the application shall be accompanied by the information required of institutions applying for such a license.

(3) After review of the application and any further information required by the department, any investigation deemed necessary or appropriate and evidence of a surety bond required by this act, the department shall issue or not issue the permit to the applicant. The permit shall be nontransferable and may be upon such terms and conditions as the department may require.

(4) The permit shall be in the form prescribed by the department and shall state in a clear and conspicuous manner at least the following information:

- (a) the date of issuance, effective date and date of expiration;
- (b) the name and address of the agent;
- (c) the name and address of the institution or institutions the agent may represent;
- (d) the authority for and conditions of approval; and
- (e) any terms or conditions required by the department.

(5) No permit shall be valid for more than two (2) years and may be valid for a lesser period of time.

Section 11. There is a new section to be numbered 75-9211, R.C.M. 1947, which reads as follows:

75-9211. **Denial of application for license or permit.** (1) If the department determines that an application is deficient under the criteria established for the issuance of a license or permit, the department shall notify the applicant in writing of that determination and the deficiencies.

(2) If the applicant requests, and the request demonstrates to the department the applicant's intention and ability to remedy the deficiencies causing the denial of the license or permit, the department may grant the applicant a reasonable period of time to take such action.

(3) If a request under subsection (2) above is not made or a request is made and is denied or the period of time granted expires without remedy of the deficiencies, the application shall be denied. The department shall notify the applicant of the denial, the reasons therefor and

the opportunity of the applicant for a hearing before the department provided in section 13 [75-9213].

(4) In the event an application for a permit is denied, the department shall notify in writing the institution or institutions to be represented or represented by the applicant.

Section 12. There is a new section to be numbered 75-9212, R.C.M. 1947, which reads as follows:

**75-9212. Revocation of license or permit.** If the department has reasonable cause to believe that a holder of a license or permit issued under any provision of this act has violated or is in violation of this act or criteria established under this act, the department may revoke the license or permit as provided hereafter.

(1) The department shall notify the holder in writing of the intention to revoke, the grounds for the intended action and a date upon which such revocation shall become effective.

(2) If, prior to the effective date of the revocation, the holder submits evidence showing the holder has taken action to remedy the violation or violations which has or have occurred or is occurring and such evidence is satisfactory to the department, the department may vacate the effective date of the revocation.

(3) If there is no submission under subsection (2) above, the license or permit shall be revoked on the effective date, unless the holder requests a hearing before the department under the provisions of section 13 [75-9213] of this act.

(4) In the event a permit is revoked, the department shall notify the institution or institutions represented by the holder of the revocation.

Section 13. There is a new section to be numbered 75-9213, R.C.M. 1947, which reads as follows:

**75-9213. Hearing.** Any person denied a license or permit or who has received notice of intention to revoke a license or permit shall have the right to a hearing before the department as provided herein.

(1) If, upon receipt of notification of denial or intention to revoke, the holder or applicant desires a hearing, he shall notify the department in writing of such desire within ten (10) days after the giving of notice of such action or intention.

(2) Upon receipt of such notification, the department shall fix a time and place for hearing and shall inform in writing the applicant or holder of such time and place.

(3) The department may appoint a hearing officer who shall conduct the hearing, hear testimony and receive evidence. After the hearing, the hearing officer shall prepare proposed findings of fact, conclusions of law and an order which shall be served on the parties to the hearings and presented to the department. A party adversely affected by the order may file exceptions, present briefs and argument to the department.

(4) At such hearing, the party may employ counsel, shall have the right to hear the evidence upon which the action is based and present evidence in extenuation or opposition.

(5) A decision of the department after hearing, or on the expiration of time for request for a hearing if none is made, shall be final subject to judicial review as provided in section 14 [75-9214] of this act.

Section 14. There is a new section to be numbered 75-9214, R.C.M. 1947, which reads as follows:

**75-9214. Judicial review.** Any person aggrieved or adversely affected by a final decision of the department may seek judicial review of such decision by filing a petition for a writ of certiorari in the district court of the First Judicial District, in and for the county of Lewis and Clark, not later than thirty (30) days after the date of such decision.

Section 15. There is a new section to be numbered 75-9215, R.C.M. 1947, which reads as follows:

**75-9215. Civil relief.** Any person or persons claiming loss or damage as a result of any act or practice by a postsecondary institution or its agent or both, which act or practice violates the criteria established by the department under section 6 [75-9206] of this act or the prohibitions in section 8 [75-9208] of this act, may sue in a court of proper jurisdiction of this state the institution of the agent or both and their sureties for the amount of such damage or loss and, if successful, shall be awarded, in addition to damages, court costs and reasonable attorney's fees.

Section 16. There is a new section to be numbered 75-9216, R.C.M. 1947, which reads as follows:

**75-9216. Bonds required.** (1) At the time application is made for license the department may require the postsecondary educational institution making such application to file with the department a good and sufficient surety bond in such sum as may be determined by the department. Said bond shall be executed by the applicant as principal and by a surety company qualified and authorized to do business in this state. The bond shall be conditioned to provide indemnification to any student or enrollee or his parent or guardian, or class thereof, determined to have suffered loss or damage as a result of any act or practice which is a violation of this act by said postsecondary educational institution, and that the bonding company shall pay any final, nonappealable judgment rendered by any court of this state having jurisdiction, upon receipt of written notification thereof. Regardless of the number of years that such bond is in force, the aggregate liability of the surety thereon shall in no event exceed the penal sum of the bond. The bond shall be for two (2) years or coterminous with the license.

(2) An application for a permit shall be accompanied by a good and sufficient surety bond in a penal sum of one thousand dollars (\$1,000). Said bond shall be executed by the applicant as principal and by a surety company qualified and authorized to do business in this state. The bond may be in blanket form to cover more than one agent for a postsecondary educational institution, but it shall cover each agent for said institution

in a penal sum of one thousand dollars (\$1,000). The bond shall be conditioned to provide indemnification to any student, enrollee, or his or her parents or guardian, or class thereof, determined to have suffered loss or damage as a result of any act or practice which is a violation of this act by said agent, and that the bonding company shall pay any final, nonappealable judgment rendered by any court of this state having jurisdiction, upon receipt of written notification thereof. Regardless of the number of years that such bond is in force, the aggregate liability of the surety thereon shall in no event exceed the penal sum thereof. The bond shall be for two (2) years or coterminous with the permit.

(3) The surety bond to be filed hereunder shall cover the period of the license or the permit except when a surety shall be released as provided herein. A surety on any bond filed under the provisions of this section may be released after such surety shall serve written notice to the department forty (40) days prior to said release; but said release shall not discharge or otherwise affect any claim theretofore or thereafter filed by a student or enrollee or his parent or guardian for loss or damage resulting from any act or practice which is a violation of this act alleged to have occurred while the bond was in effect, nor for an institution's ceasing operations during the term for which tuition has been paid while the bond was in force.

(4) A license for an institution to operate or a permit to an agent shall be suspended by operation of law when said institution or agent is no longer covered by a surety bond as required by this section; but the department shall cause the institution or an agent, or both, to receive at least thirty (30) days written notice prior to the release of the surety to the effect that the license or permit shall be suspended by operation of law until another surety bond shall be filed in the same manner and like amount as the bond being terminated.

Section 17. There is a new section to be numbered 75-9217, R.C.M. 1947, which reads as follows:

75-9217. **Fees.** All fees collected pursuant to the provisions of this act shall be deposited in the general fund, and no fees collected under the provisions of this act shall be subject to refund. The fees to be collected by the department shall accompany an application for authorization to operate or for an agent's permit, in accordance with the following schedule:

- (1) the initial application fee for a license shall be fifty dollars (\$50);
- (2) the renewal fee for a license shall be twenty-five dollars (\$25);
- (3) the initial fee for permit shall be twenty-five dollars (\$25); and
- (4) the renewal fee for permit shall be ten dollars (\$10).

Section 18. There is a new section to be numbered 75-9218, R.C.M. 1947, which reads as follows:

75-9218. **Preservation of records.** In the event any postsecondary educational institution now or hereafter located in this state proposes to discontinue its operation, the chief administrative officer, by whatever

title designated, of such institution shall cause to be filed with the department the original or legible true copies of all such academic records of such institution as may be specified by the department. Such records shall include, at a minimum, such academic information as is customarily required by colleges when considering students for transfer or advanced study; and, as a separate document, the academic record of each former student. In the event it appears to the department that any such records of an institution discontinuing its operations are in danger of being destroyed, secreted, mislaid, or otherwise made unavailable, the department may seize and take possession of such records on its own motion, and without order of court. The department shall maintain or cause to be maintained a permanent file of such records coming into its possession.

Section 19. There is a new section to be numbered 75-9219, R.C.M. 1947, which reads as follows:

**75-9219. Enforceability of notes and contracts.** (1) If the person to whom educational services are to be rendered or furnished by a postsecondary educational institution is a resident of this state at the time any contract relating to payment for such services or any note, instrument, or other evidence of indebtedness relating thereto is entered into, the provisions of this section shall govern the rights of the parties to such contract or evidence of indebtedness. In such event, the following agreements entered into in connection with the contract or the giving of such evidence of indebtedness are invalid:

- (a) that the law of another state shall apply;
- (b) that the maker or any person liable on such contract or evidence of indebtedness consents to the jurisdiction of another state;
- (c) that another person is authorized to confess judgment on such contract or evidence of indebtedness; and
- (d) that fixes venue.

(2) No note, instrument or other evidence of indebtedness, or contract relating to payment for education or educational services shall be enforceable in the courts of this state by any postsecondary educational institution located in Montana unless the institution shall have received a license; nor by any postsecondary educational institution having an agent or agents in Montana unless any and all agents who enrolled or sought to enroll the person to whom such services were to be rendered, or to whom educational credentials were to be granted, had a permit at the time of their contact with such person.

(3) For the purposes of this section, "lending agency" means any postsecondary educational institution or any person, association, partnership or corporation controlling, controlled by or held in common ownership with such institution, loaning money to such institution or students thereof.

(4) Any lending agency extending credit or loaning money to any person for tuition, fees, or any charges whatever of a postsecondary educational institution for educational or other services or facilities to be rendered or furnished by said institution, shall cause any note, instru-

ment, or other evidence of indebtedness taken in connection with such loan or extension of credit to be conspicuously marked on the face thereof, "student loan." In the event such lending agency fails to do so, it shall be liable for any loss or damage suffered or incurred by any subsequent assignee, transferee, or holder of such evidence of indebtedness on account of the absence of such notation.

(5) Notwithstanding the presence or absence of such notation, and notwithstanding any agreement to the contrary, the lending agency making such loan or extending such credit, and any transferee, assignee, or holder of such evidence of indebtedness shall be subject to all defenses and claims which could be asserted against the postsecondary educational institution which was to render or furnish such services or facilities, by any party to said evidence of indebtedness or by the person to whom such services or facilities were to be rendered or furnished, up to the amount remaining to be paid thereon.

Section 20. There is a new section to be numbered 75-9220, R.C.M. 1947, which reads as follows:

**75-9220. Violations — criminal — penalty.** Any person, group, or entity, or any owner, officer, agent, or employee thereof, who shall willfully violate the provisions of section 8 [75-9208], or who shall willfully fail or refuse to deposit with the department the records required by section 18 [75-9218], shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine not to exceed one thousand dollars (\$1,000), or by imprisonment in the county jail not to exceed six (6) months, or by both such fine and imprisonment. Each day's failure to comply with the provisions of said sections shall be a separate violation. Such criminal sanctions may be imposed by a court of competent jurisdiction in an action brought by the county attorney.

Section 21. There is a new section to be numbered 75-9221, R.C.M. 1947, which reads as follows:

**75-9221. Jurisdiction of courts — service of process.** Any postsecondary educational institution not exempt from the provisions of this chapter, whether or not a resident of or having a place of business in this state, which instructs or educates, or offers to instruct or educate, enrolls or offers to enroll, contracts or offers to contract, to provide instructional or educational services in this state, whether such instruction or services are provided in person or by correspondence, to a resident of this state, or which offers to award or awards any educational credentials to a resident of this state, submits such institution, and, if a natural person his personal representative, to the jurisdiction of the courts of this state, concerning any cause of action arising therefrom, and for the purpose of enforcement of this by injunction pursuant to section 22 [75-9222]. Service of process upon any institution subject to the jurisdiction of the courts of this state may be made by personally serving the summons upon the defendant within or outside the state in the manner prescribed by the rules of civil procedure, with the same force and effect as if the summons has been personally served within Montana. Nothing contained in this section shall limit or affect the right to serve any process as prescribed by the rules of civil procedure.

Section 22. There is a new section to be numbered 75-9222, R.C.M. 1947, which reads as follows:

**75-9222. Enforcement — injunction.** (1) The county attorney of any county in which a postsecondary educational institution or an agent thereof is found, at the request of the department or on his own motion, may bring any appropriate action or proceeding (including injunctive proceedings, or criminal proceedings pursuant to section 20 [75-9220]) in any court of competent jurisdiction for the enforcement of the provisions of this chapter.

(2) Whenever it shall appear to the department that any person, agent, group, or entity is, is about to, or has been violating any of the provisions of this act or any of the lawful rules, regulations, or orders of the department, it may, on its own motion or on the written complaint of any person, file a petition for injunction in any court of competent jurisdiction against such person, group, or entity, for the purpose of enjoining such violation or for an order directing compliance with the provisions of this, and all rules and orders issued by the department.

Section 23. There is a new section to be numbered 75-9223, R.C.M. 1947, which reads as follows:

**75-9223. Severability.** The provisions of this act are severable, and if any part or provision of it is held void, the holding of the court shall not affect or impair any other part or provision of this act.

Section 24. **Effective date.** This act is effective January 1, 1975.

Approved March 25, 1974

## CHAPTER NO. 297

AN ACT SPECIFYING THE POWERS OF TRUSTEES; PROVIDING AN EFFECTIVE DATE; AND REPEALING SECTIONS 86-327, AND 86-607, R.C.M. 1947.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is a new section to be numbered 86-902, R.C.M. 1947, which reads as follows:

**86-902. Definitions.** As used in this act: (1) "Trust" means an express trust created by a trust instrument, including a will, whereby a trustee has the duty to administer a trust asset for the benefit of a named or otherwise described income or principal beneficiary, or both; "trust" does not include a resulting or constructive trust, a business trust which provides for certificates to be issued to the beneficiary, an investment trust, a voting trust, a security instrument, a trust created by the judgment or decree of a court not sitting in probate, a liquidation trust, or a trust for the primary purpose of paying dividends, interests, interest coupons, salaries, wages, pensions or profits, or employee benefits of any kind, an

instrument wherein a person is nominee or escrowee for another, a trust created in deposits in any financial institution, or other trust the nature of which does not admit of general trust administration.

(2) "Trustee" means an original, added, or successor trustee.

(3) "Prudent man" means a trustee who in investing, reinvesting, purchasing, acquiring, selling and managing property for another, shall exercise the judgment and care, under the circumstances then prevailing, which men of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income, as well as the probable safety of their capital. Within the limitations of the foregoing standard, and subject to any express provisions or limitations contained in any particular trust instrument, a trustee is authorized to acquire every kind of property, real, personal or mixed, and every kind of investment, specifically including, but not by way of limitation, corporate obligations of every kind, and stocks, preferred or common, which men of prudence, discretion and intelligence acquire for their own account.

Section 2. There is a new section to be numbered 86-903, R.C.M. 1947, which reads as follows:

**86-903. Trust instruments — limitation — incorporation.** (1) The trustee has all powers conferred upon him by the provisions of this act unless limited in the trust instrument.

(2) An instrument which is not a trust under section 1(1) [86-902(1)] may incorporate any part of this act by reference.

Section 3. There is a new section to be numbered 86-904, R.C.M. 1947, which reads as follows:

**86-904. Powers of trustee.** (1) From time of creation of the trust until final distribution of the assets of the trust, a trustee has the power to perform, without court authorization, every act which a prudent man would perform for the purposes of the trust including but not limited to the powers specified in subsection (3).

(2) In the exercise of his powers including the powers granted by this act, a trustee has a duty to act with due regard to his obligation as a fiduciary.

(3) A trustee has the power, subject to subsections (1) and (2):

(a) to collect, hold, and retain trust assets received from a trustor until, in the judgment of the trustee, disposition of the assets should be made; and the assets may be retained even though they include an asset in which the trustee is personally interested or which is not otherwise a qualified investment;

(b) to receive additions to the assets of the trust from any source;

(c) to continue or participate in the operation of any business or other enterprise, and to effect incorporation, dissolution, or other change in the form of the organization of the business or enterprise;



(d) to acquire an undivided interest in a trust asset in which the trustee, in any trust capacity, holds an undivided interest;

(e) to invest and reinvest trust assets in accordance with the provisions of the trust or as provided by law;

(f) to deposit trust funds in a bank, including a bank operated by the trustee;

(g) to acquire or dispose of an asset, for cash or on credit, at public or private sale; and to manage, develop, improve, exchange, partition, change the character of, or abandon a trust asset or any interest therein; and to encumber, mortgage, or pledge a trust asset for a term within or extending beyond the term of the trust, in connection with the exercise of any power vested in the trustee;

(h) to make ordinary or extraordinary repairs or alterations in buildings or other structures, to demolish any improvements, to raze existing or erect new party walls or buildings;

(i) to subdivide, develop, or dedicate land to public use; or to make or obtain the vacation of plats and adjust boundaries; or to adjust differences in valuation on exchange or partition by giving or receiving consideration; or to dedicate easements to public use without consideration;

(j) to enter for any purpose into a lease as lessor or lessee with or without option to purchase or renew for a term within or extending beyond the term of the trust;

(k) to enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;

(l) to grant an option involving disposition of a trust asset, or to take an option for the acquisition of any asset;

(m) to vote a security, in person or by general or limited proxy, and enter into voting trusts;

(n) to pay calls, assessments, and any other sums chargeable or accruing against or on account of securities;

(o) to sell or exercise stock subscription or conversion rights; to consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise and retain any property received pursuant thereto;

(p) to hold a security in the name of a nominee or in other form without disclosure of the trust, so that title to the security may pass by delivery, but the trustee is liable for any act of the nominee in connection with the stock so held;

(q) to insure the assets of the trust against damage or loss, and the trustee against liability with respect to third persons;

(r) to borrow money from any source to be repaid from trust assets or otherwise; to advance money for the protection of the trust, and for all expenses, losses, and liability sustained in the administration of the

trust or because of the holding or ownership of any trust assets, for which advances with any interest the trustee has a lien on the trust assets as against the beneficiary;

(s) to pay or contest any claim; to settle a claim by or against the trust by compromise, arbitration, or otherwise; and to release, in whole or in part, any claim belonging to the trust to the extent that the claim is uncollectible;

(t) to pay taxes, assessments, compensation of the trustee, and other expenses incurred in the collection, care, administration, and protection of the trust;

(u) to allocate items of income or expense to either trust income or principal, as provided by law, including creation of reserves out of income for depreciation, obsolescence, or amortization, or for depletion in mineral or timber properties;

(v) to pay any property distributable to a beneficiary under disability, without liability to the trustee, to the beneficiary or for use of the beneficiary either to his parent, his guardian, person with whom he resides or others;

(w) to effect distribution of property and money in divided or undivided interests and to adjust resulting differences in valuation;

(x) to employ persons, including attorneys, auditors, investment advisors, or agents, even if they are associated with the trustee, to advise or assist the trustee in the performance of his administrative duties;

(y) to prosecute or defend actions, claims or proceedings for the protection of trust assets and of the trustee in the performance of his duties;

(z) to execute and deliver all instruments which will accomplish or facilitate the exercise of the powers vested in the trustee.

Section 4. There is a new section to be numbered 86-905, R.C.M. 1947, which reads as follows:

86-905. **Transfer of office prohibited.** The trustee shall not transfer his office to another or delegate the entire administration of the trust to a co-trustee or another.

Section 5. There is a new section to be numbered 86-906, R.C.M. 1947, which reads as follows:

86-906. **Supervision by court.** (1) This act does not affect the power of a court of competent jurisdiction for cause shown and upon petition of the trustee or affected beneficiary and upon appropriate notice to the affected parties to relieve a trustee from any restrictions on his power that would otherwise be placed upon him by the trust or by this act.

(2) If the duty of the trustee and his individual interest or his interest as trustee of another trust, conflict in the exercise of a trust power, the power may be exercised only by court authorization, except as provided in sections 3(3)(a), (d), (f), (r), and (x)[86-904(3) (a), (d), (f), (r), and (x)], upon petition of the trustee. Under this section, personal profit or advan-

tage to an affiliated or subsidiary company or association is personal profit to any corporate trustee.

Section 6. There is a new section to be numbered 86-907, R.C.M. 1947, which reads as follows:

86-907. **Multiple trustees — majority and minority.** (1) Any power vested in three (3) or more trustees may be exercised by a majority, but a trustee who has not joined in exercising a power is not liable to the beneficiaries or to others for the consequences of the exercise.

(2) If two (2) or more trustees are appointed to perform a trust, and if any of them is unable or refuses to accept the appointment, or, having accepted, ceases to be a trustee, the surviving or remaining trustees shall perform the trust and succeed to all the powers, duties, and discretionary authority given to the trustees jointly.

(3) This section does not excuse a co-trustee from liability for failure either to participate in the administration of the trust or to attempt to prevent a breach of trust.

Section 7. There is a new section to be numbered 86-908, R.C.M. 1947, which reads as follows:

86-908. **Effective date of provisions.** Except as specifically provided in the trust, the provisions of this act apply to any trust established after the effective date of this act and to any trust asset acquired by the trustee after the effective date of this act.

Section 8. There is a new section to be numbered 86-909, R.C.M. 1947, which reads as follows:

86-909. **Uniformity — construction.** This act shall be construed to effectuate its general purpose to make uniform the law of those states which enact it.

Section 9. There is a new section to be numbered 86-910, R.C.M. 1947, which reads as follows:

86-910. **Short title.** This act may be cited as the "Montana Trustees' Powers Act."

Section 10. There is a new section to be numbered 86-901, R.C.M. 1947, which reads as follows:

86-901. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Section 11. There is a new section to be numbered 86-911, R.C.M. 1947, which reads as follows:

86-911. Sections 86-327, and 86-607, R.C.M. 1947, are repealed.

Section 12. This act is effective upon passage and approval.

Approved March 25, 1974

## CHAPTER NO. 298

AN ACT TO ESTABLISH COUNTY COMMISSIONER DISTRICTS;

PROVIDING FOR THE ELECTION OF COUNTY COMMISSIONERS AT LARGE UNTIL AN OPTIONAL OR ALTERNATIVE FORM OF GOVERNMENT AUTHORIZED BY LAW HAS BEEN ADOPTED; REPEALING SECTION 16-902, R.C.M. 1947; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is a new section to be numbered 16-902.1, R.C.M. 1947, which reads as follows:

16-902.1. **Commissioners shall district.** The board of county commissioners shall in every county of the state, following each federal decennial census, divide their respective counties into three (3) commissioner districts as compact and equal in population and area as possible. The district judge or judges of the said county shall review the action of the commissioners to determine whether or not such action meets the requirements of this section. Such apportionment may take place at any time for the purpose of equalizing in population and area such commissioner districts, however, no commissioner district shall at any time be changed to affect the term of office of any county commissioner who has been elected, and provided further, that no change in the boundaries of any commissioner district shall be made within six (6) months next preceding a general election.

Section 2. There is a new section to be numbered 16-902.2, R.C.M. 1947, which reads as follows:

16-902.2. **Filing of districts.** When such division of commissioner districts has been made, there shall be filed in the office of the county clerk and recorder of such county, a certificate designating the metes and bounds of the boundary lines and limits of each said commissioner district. The certificate shall be dated and signed by the district court judge or judges of the county.

Section 3. There is a new section to be numbered 16-902.3, R.C.M. 1947, which reads as follows:

16-902.3. **Elections.** At each general election, the member or members of the board of county commissioners to be elected, shall be selected from the residents and electors of the district or districts in which the vacancy occurs, but the election of such member or members of the board shall be submitted to the entire electorate of the county, provided, however, that no one shall be elected as a member of said board who has not resided in said district for at least two (2) years next preceding the time when he shall become a candidate for said office.

Section 4. There is a new section to be numbered 16-902.4, R.C.M. 1947, which reads as follows:

16-902.4. **Refund of fee.** Any candidate filing for the office of county commissioner prior to the effective date of this act that does not comply with the provisions of this act shall receive a refund of their filing fee.

Section 5. Section 16-902, R.C.M. 1947, is repealed.

Section 6. The division of the counties into three (3) commissioner districts as provided for in section 1 [16-902.1] of this act shall not be accomplished until subsequent to January 1, 1975. The boundaries of existing commissioner districts shall be continued for the purposes of elections to be held in the year 1974.

Section 7. There is a new section to be numbered 16-902.5, R.C.M. 1947, which reads as follows:

16-902.5. **Not applicable to counties with alternative forms of government.** This act shall not apply to counties adopting an optional or alternative form of government authorized by law.

Section 8. This act is effective on its passage and approval.

Approved March 25, 1974

## CHAPTER NO. 299

AN ACT TO PROVIDE MINIMUM PENSIONS FOR RETIRED FIREMEN, AND AMENDING SECTIONS 11-1925, 11-1926, AND 11-1927, R.C.M. 1947.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 11-1925, R.C.M. 1947, is amended to read as follows:

"11-1925. **Pensions to retired firemen.** Each and every fire department relief association organized and existing under the laws of this state shall pay to each of its members who elect to retire from active service after having completed twenty (20) years or more of active duty and has reached the age of fifty (50) years as a fully paid member of a paid, or partly paid and partly volunteer fire department of the city or town wherein such association has been formed, out of any money in the association's "disability and pension fund," a "service pension" in an amount which shall be equal to one-half ( $\frac{1}{2}$ ) of the sum last received by the member as a monthly compensation for his services as an active member of said fire department. However, effective July 1, 1963, and after completing twenty (20) years or more of active service and attaining the age of fifty (50) years, a member elects to serve an additional one (1) to ten (10) years, then the pension shall be increased at the rate of one per cent (1%) per year of such additional service, up to a maximum of sixty per cent (60%) of the last month's salary received as a monthly compensation for his services as an active member of said fire department. However, the monthly compensation paid to members retiring on or after July 1, 1973, shall in no event become less than one-half ( $\frac{1}{2}$ ) the regular monthly salary paid to a confirmed active fireman of that city as provided each and every year in the annual budget of that city. *In no event shall the monthly compensation paid to a member retiring prior to July 1, 1974 be less than two hundred dollars (\$200).* In case of volunteer men the

compensation shall in no event exceed the sum of seventy-five dollars (\$75) per month.

A member of a pure volunteer fire department who has served twenty (20) years or more as an active member of such fire department, without qualifying as to any provisions pertaining to an attained age, shall be entitled to the benefits provided for by this act."

Section 2. Section 11-1926, R.C.M. 1947, is amended to read as follows:

"11-1926. **Disability pension.** Each and every fire department relief association, organized and existing under the laws of this state, shall pay a "disability pension," out of any moneys in the association's "disability and pension fund," to each and every member of said association who has become injured or disabled by reason of sickness or injury contracted or received in line of duty, in an amount which shall be equal to one-half ( $\frac{1}{2}$ ) of the sum last received as a monthly compensation by such injured or disabled member for services rendered the fire department of the city or town wherein such association has been formed. However, effective July 1, 1963, and after completing twenty (20) years or more of active service and attaining the age of fifty (50) years, a member elects to serve an additional one (1) to ten (10) years, then the pension shall be increased at the rate of one per cent (1%) per year of such additional service, up to a maximum of sixty per cent (60%) of the last month's salary received as a monthly compensation for his services as an active member of said fire department. However, the monthly compensation paid to members retiring on or after July 1, 1973, shall in no event become less than one-half ( $\frac{1}{2}$ ) the regular monthly salary paid to a confirmed active fireman of that city as provided each and every year in the annual budget of that city. *In no event shall the monthly compensation paid to a member retiring prior to July 1, 1974 be less than two hundred dollars (\$200).* In case of volunteer firemen such disability pension shall in no event exceed the sum of seventy-five (\$75) dollars per month."

Section 3. Section 11-1927, R.C.M. 1947, is amended to read as follows:

"11-1927. **Pensions to widows and orphans.** Each and every fire department relief association, organized and existing under the laws of this state, shall pay to the widow or orphans of a deceased member of said association, who, on the date of his decease, was an active member of the fire department in the city or town wherein such association has been formed, or had elected to retire from active service of said fire department and receive a "service pension" as provided for by section 11-1925, or prior to his decease had suffered a sickness or injury, and was receiving or was qualified to receive a "disability pension," as provided by section 11-1926, out of any money in relief association's "disability and pension fund," a monthly pension in an amount which shall be equal to one-half ( $\frac{1}{2}$ ) of the monthly compensation last received by such deceased member for his services as an active member of the fire department in the city or town wherein such association has been formed. However, effective July 1, 1963, and after completing twenty (20) years or more of active service and attaining the age of fifty (50) years, a member

elects to serve an additional one (1) to ten (10) years, then the pension shall be increased at the rate of one per cent (1%) per year of such additional service, up to a maximum of sixty per cent (60%) of the last month's salary received as a monthly compensation for his services as an active member of said fire department. However, the monthly compensation paid to a widow or orphan of an active member who becomes deceased after July 1, 1973, or an active member who elects to retire after July 1, 1973, shall in no event become less than one-half (½) the regular monthly salary paid to a confirmed active fireman of that city as provided each and every year in the annual budget of that city. *In no event shall the monthly compensation paid to a widow or orphan of an active member who became deceased prior to July 1, 1974 or an active member who elected to retire before July 1, 1974 be less than two hundred dollars (\$200).* Provided, that said pension shall be paid to the within named widow only so long as she remains unmarried, and further provided, that a widow of a deceased fireman shall not be entitled to the pension, provided for by this act, in those cases where the marriage was consummated after the fireman had elected to retire from active service and received a "service pension" as provided for by section 11-1925; or in those cases where the marriage was consummated after the fireman had qualified and was receiving a "disability pension" as provided for by section 11-1926. Provided further, that the pension herein provided for shall not be paid to the orphans of deceased firemen after they have attained the age of eighteen (18) years. In case of volunteer firemen such pension shall in no event exceed the sum of seventy-five (\$75) dollars per month."

Approved March 25, 1974

## CHAPTER NO. 300

AN ACT AMENDING SECTION 75-5709, R.C.M. 1947, TO PROVIDE FOR THE INTRODUCTION OF ADDITIONAL EVIDENCE IN THE APPEAL OF CONTROVERSIES TO THE SUPERINTENDENT OF PUBLIC INSTRUCTION AND CLARIFYING THE PROCEDURE FOR REVIEW OF SUCH CONTROVERSIES BY THE STATE COURTS.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 75-5709, R.C.M. 1947, is amended to read as follows:

"75-5709. **Controversy appeal.** The superintendent of public instruction shall decide matters of controversy when they are appealed from:

- (1) a decision of a county superintendent rendered under the provisions of section 75-5811; or
- (2) a decision of a county transportation committee rendered under the provisions of section 75-7015.

The superintendent of public instruction shall make his decision on the

basis of the transcript of the fact-finding hearing conducted by the county superintendent or county transportation committee and documents presented at the hearing. *The superintendent of public instruction may require, if he deems necessary, affidavits, verified statements, or sworn testimony as to the facts in issue. The decision of the superintendent of public instruction shall be final, subject to the proper legal remedies in the state courts. Such proceedings shall be commenced no later than sixty (60) days after the date of the decision of the superintendent of public instruction.*

In order to establish a uniform method of hearing and determining matters of controversy arising under this Title, the superintendent of public instruction shall prescribe and enforce rules of practice and regulations for the conduct of hearings and the determination of appeals by all school officials of the state."

Approved March 25, 1974

## CHAPTER NO. 301

AN ACT AMENDING SECTION 11-1919, R.C.M. 1947, RELATING TO PAYMENT OF PORTIONS OF INSURANCE COMPANIES' LICENSE FEES BY THE STATE AUDITOR TO FIRE DEPARTMENT RELIEF ASSOCIATIONS.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 11-1919, R.C.M. 1947, is amended to read as follows:

**"11-1919. State auditor to pay fire department relief association out of license fees collected from insurance companies.** At the end of the fiscal year, the state auditor shall issue and deliver to the treasurer of every city or town of the first and second class, for the use and benefit of the fire department relief association legally existing in every such city or town entitled by law to receive the same, out of the license fees on insurance risks collected by him, an amount equal to ten per centum (10%) of the total annual compensation paid by such city or town to its paid or part-paid firemen for services in the previous calendar year. The city clerk of each such city or town shall certify in writing to the state auditor, on or before March 1 of each year, the amount so paid by such city or town as compensation for services to paid or part-paid firemen.

*In the event of a disaster resulting in the death or injury sufficient to draw pension of ten percent (10%) of the active force and when the fund of such fire department relief association after receiving all moneys as designated in section 11-1911 and section 11-1912 and the ten percent (10%) of annual compensation as designated in this act does not show at least the one (1) mill growth as referred to in section 11-1912 then the treasurer of such relief association shall request and the state auditor shall*



*issue and deliver to the treasurer of every city or town of the first and second class, for the use and benefit of the fire department relief association legally existing in every city or town entitled to receive the same, out of the license fees collected by him, an additional amount to show at least the one (1) mill growth referred to in section 11-1912.*

In the event a city of the second class is not entitled to receive a sum equal to twenty-five one hundredths (25/100) mills of its total assessed valuation under the foregoing method of computation then, in that event, the fire department relief association of that city shall receive its money in the same manner as provided below for cities of the third class.

(1) At the end of the fiscal year, the state auditor shall issue and deliver to the treasurer of every city or town, except cities or towns of the first or second class, for the use and benefit of the fire department relief association legally existing in every such city or town entitled by law to receive the same, his warrant for an amount equal to the taxes upon the fire portion of the direct premiums after deducting cancellations and return premiums, collected by the state auditor, ex officio insurance commissioner, from insurers authorized to effect insurance on risks enumerated in subsection 2 of this section, as said cities or towns are each severally entitled to, computed as follows:

(a) Each and every fire department relief association legally organized and existing in any city or town, except cities or towns of the first or second class, and entitled by law to receive the same shall receive, as its portion of the total taxes on premiums collected from insurers authorized to effect insurance on risks enumerated in subsection 2 of this section, the fire portion of the direct premiums, after deducting cancellations and return premiums, assessed and collected by insurers authorized to effect insurance on risks enumerated in subsection 2 of this section in the said city or town.

(b) The legally organized and existing fire department relief associations in all cities or towns where the taxes on premiums collected and distributed pursuant to subdivision (a) above is insufficient to make an amount equal to one hundred dollars (\$100) shall receive such additional amount from the total taxes on premiums collected from insurers authorized to effect insurance against risks enumerated in subsection 2 of this section as may be necessary to make the total amount received by said fire department relief association equal to the sum of one hundred dollars (\$100).

(2) The risks referred to in subsection 1 above, are enumerated as follows: Insurance of houses, buildings, and all other kinds of property against loss or damage by fire or other casualty, and all kinds of insurance on goods, merchandise, or other property in the course of transportation, whether on land or water or air; insurance against loss or damage to motor vehicles resulting from accident, collision, or marine and inland navigation and transportation perils; insurance of growing crops against loss or damage resulting from hail or the elements; insurance against loss or damage by water to any goods or premises arising from the breakage or leakage of sprinklers, pumps or other apparatus; and insurance against loss or legal liability for loss because of damage to property caused by

the use of teams or vehicles whether by accident or collision or by explosion of any engine or tank or boiler or pipe or tire of any vehicle, and also including insurance against theft of the whole or any part of any vehicle."

Approved March 25, 1974

## CHAPTER NO. 302

AN ACT ADOPTING CERTAIN PROVISIONS OF THE UNIFORM ALCOHOLISM AND INTOXICATION ACT, INCREASING THE TAX ON ALCOHOLIC BEVERAGES TO CREATE A FUND FOR THE PROGRAMS AUTHORIZED BY THIS ACT, AMENDING SECTIONS 4-201, 4-240, 4-324, 11-927, AND 94-8-105, R.C.M. 1947, AND REPEALING SECTIONS 4-164 AND 69-6202, R.C.M. 1947.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is a new section to be numbered 69-6211, R.C.M. 1947, which reads as follows:

69-6211. **Declaration of policy.** It is the policy of the state of Montana to recognize alcoholism as an illness and that alcoholics and intoxicated persons may not be subjected to criminal prosecution because of their consumption of alcoholic beverages but rather should be afforded a continuum of treatment in order that they may lead normal lives as productive members of society.

Section 2. There is a new section to be numbered 69-6212, R.C.M. 1947, which reads as follows:

69-6212. **Definitions.** For purposes of this act:

(1) "alcoholic" means a person who habitually lacks self-control as to the use of alcoholic beverages, or uses alcoholic beverages to the extent that his health is substantially impaired or endangered or his social or economic function is substantially disrupted;

(2) "approved private treatment facility" means a private agency meeting the standards prescribed in section 69-6216(1) and approved under section 69-6216;

(3) "approved public treatment facility" means a treatment agency operating under the direction and control of the department or providing treatment under this act through a contract with the department and approved under section 69-6216;

(4) "department" means the department of health and environmental sciences provided for in section 82A-601, R.C.M. 1947;

(5) "incapacitated by alcohol" means that a person, as a result of the use of alcohol, is unconscious or has his judgment otherwise so impaired

that he is incapable of realizing and making a rational decision with respect to his need for treatment;

(6) "incompetent person" means a person who has been adjudged incompetent by the district court;

(7) "intoxicated person" means a person whose mental or physical functioning is substantially impaired as a result of the use of alcohol;

(8) "treatment" means the broad range of emergency, outpatient, intermediate, and inpatient services and care, including diagnostic evaluation, medical, psychiatric, psychological, and social service care, vocational rehabilitation and career counseling, which may be extended to alcoholics and intoxicated persons.

Section 3. There is a new section to be numbered 69-6213, R.C.M. 1947, which reads as follows:

**69-6213. Powers of department.** The department may:

(1) plan, establish, and maintain treatment programs as necessary or desirable;

(2) coordinate its activities and cooperate with alcoholism programs in this and other states, and make contracts and other joint or cooperative arrangements with state, local, or private agencies in this and other states for the treatment of alcoholics and intoxicated persons and for the common advancement of alcoholism programs;

(3) do other acts and things necessary or convenient to execute the authority expressly granted to it; and

(4) provide treatment facilities for alcoholics and intoxicated persons.

Section 4. There is a new section to be numbered 69-6214, R.C.M. 1947, which reads as follows:

**69-6214. Duties of department.** The department shall:

(1) develop, encourage, and foster statewide, regional, and local plans and programs for the prevention of alcoholism and treatment of alcoholics and intoxicated persons in cooperation with public and private agencies, organizations, and individuals and provide technical assistance and consultation services for these purposes;

(2) coordinate the efforts and enlist the assistance of all public and private agencies, organizations, and individuals interested in prevention of alcoholism and treatment of alcoholics and intoxicated persons;

(3) cooperate with the department of institutions and board of pardons in establishing and conducting programs to provide treatment for alcoholics and intoxicated persons in or on parole from penal institutions;

(4) cooperate with the department of education, the superintendent of public instruction, schools, police departments, courts, and other public and private agencies, organizations and individuals in establishing programs for the prevention of alcoholism and treatment of alcoholics and intoxicated persons, and preparing curriculum materials thereon for use at all levels of education;

(5) prepare, publish, evaluate, and disseminate educational material dealing with the nature and effects of alcohol;

(6) develop and implement, as an integral part of treatment programs, an educational program for use in the treatment of alcoholics and intoxicated persons, which program shall include the dissemination of information concerning the nature and effects of alcohol;

(7) organize and foster training programs for all persons engaged in treatment of alcoholics and intoxicated persons;

(8) sponsor and encourage research into the causes and nature of alcoholism and treatment of alcoholics and intoxicated persons, and serve as a clearing house for information relating to alcoholism;

(9) specify uniform methods for keeping statistical information by public and private agencies, organizations, and individuals, and collect and make available relevant statistical information, including number of persons treated, frequency of admission and readmission, and frequency and duration of treatment;

(10) advise the governor in the preparation of a comprehensive plan for treatment of alcoholics and intoxicated persons for inclusion in the state's comprehensive health plan;

(11) review all state health, welfare, and treatment plans to be submitted for federal funding under federal legislation, and advise the governor on provisions to be included relating to alcoholism and intoxicated persons;

(12) assist in the development of, and cooperate with, alcohol education and treatment programs for employees of state and local governments and businesses and industries in the state;

(13) utilize the support and assistance of interested persons in the community, particularly recovered alcoholics, to encourage alcoholics voluntarily to undergo treatment;

(14) cooperate with the department of justice in establishing and conducting programs designed to deal with the problem of persons operating motor vehicles while intoxicated;

(15) encourage general hospitals and other appropriate health facilities to admit without discrimination alcoholics and intoxicated persons and to provide them with adequate and appropriate treatment;

(16) encourage all health and disability insurance programs to include alcoholism as a covered illness; and

(17) submit to the governor an annual report covering the activities of the department.

Section 5. There is a new section to be numbered 69-6215, R.C.M. 1947, which reads as follows:

**69-6215. Comprehensive program for treatment.** (1) The department shall establish a comprehensive and coordinated program for the treatment of alcoholics and intoxicated persons.

(2) The program shall include:

(a) emergency treatment provided by a facility affiliated with or part of the medical service of a general hospital;

(b) inpatient treatment;

(c) intermediate treatment; and

(d) outpatient and followup treatment.

(3) The department shall provide for adequate and appropriate treatment for alcoholics and intoxicated persons admitted under sections 69-6218 to 69-6221. Treatment may not be provided at a correctional institution except for inmates.

(4) All appropriate public and private resources shall be coordinated with and utilized in the program if possible.

(5) The department shall prepare, publish, and distribute annually a list of all approved public and private treatment facilities.

Section 6. There is a new section to be numbered 69-6216, R.C.M. 1947, which reads as follows:

**69-6216. Facility standards — inspections — approvals.** (1) The department shall establish standards for approved treatment facilities that must be met for a treatment facility to be approved as a public or private treatment facility, and fix the fees to be charged for the required inspections. The standards may concern only the health standards to be met and standards of treatment to be afforded patients.

(2) The department periodically shall inspect approved public and private treatment facilities at reasonable times and in a reasonable manner.

(3) The department shall maintain a list of approved public and private treatment facilities.

(4) Each approved public and private treatment facility shall file with the department on request, data, statistics, schedules, and information the department reasonably requires. An approved public or private treatment facility that without good cause fails to furnish any data, statistics, schedules, or information as requested, or files fraudulent returns thereof, shall be removed from the list of approved treatment facilities.

(5) The department, after holding a hearing in accordance with the Administrative Procedure Act, may suspend, revoke, limit, or restrict an approval, or refuse to grant an approval, for failure to meet its standards.

(6) A district court may restrain any violation of this section, review any denial, restriction, or revocation of approval, and grant other relief required to enforce its provisions.

(7) Upon petition of the department and after a hearing held upon reasonable notice to the facility, a district court may issue a warrant to the department authorizing it to enter and inspect at reasonable times, and examine the books and accounts of, any approved public or private treatment facility refusing to consent to inspection or examination by the department or which the department has reasonable cause to believe is operating in violation of this act.

Section 7. There is a new section to be numbered 62-6217, R.C.M. 1947, which reads as follows:

**62-6217. Acceptance for treatment; rules.** The department shall adopt rules for acceptance of persons into the treatment program, considering available treatment resources and facilities, for the purpose of early and effective treatment of alcoholics and intoxicated persons. In adopting the rules the department shall be guided by the following standards:

(1) If possible a patient shall be treated on a voluntary rather than an involuntary basis.

(2) A patient shall be initially assigned or transferred to outpatient or intermediate treatment, unless he is found to require inpatient treatment.

(3) A person shall not be denied treatment solely because he has withdrawn from treatment against medical advice on a prior occasion or because he has relapsed after earlier treatment.

(4) An individualized treatment plan shall be prepared and maintained on a current basis for each patient.

(5) Provision shall be made for a continuum of coordinated treatment services, so that a person who leaves a facility or a form of treatment will have available and utilize other appropriate treatment.

Section 8. There is a new section to be numbered 62-6218, R.C.M. 1947, which reads as follows:

**62-6218. Voluntary treatment of alcoholics.** (1) An alcoholic may apply for voluntary treatment directly to an approved public treatment facility. If the proposed patient is a minor or an incompetent person, he, a parent, a legal guardian, or other legal representative may make the application.

(2) Subject to rules adopted by the department, the administrator of an approved public treatment facility may determine who shall be admitted for treatment. If a person is refused admission to an approved public treatment facility, the administrator, subject to departmental rules, shall refer the person to another approved public treatment facility for treatment if possible and appropriate.

(3) If a patient receiving inpatient care leaves an approved public treatment facility, he shall be encouraged to consent to appropriate outpatient or intermediate treatment. If it appears to the administrator of the treatment facility that the patient is an alcoholic who requires help, the department shall arrange for assistance in obtaining supportive services and residential facilities.

(4) If a patient leaves an approved public treatment facility, with or against the advice of the administrator of the facility, the department shall make reasonable provisions for his transportation to another facility or to his home. If he has no home he shall be assisted in obtaining shelter. If he is a minor or an incompetent person the request for discharge from an inpatient facility shall be made by a parent, legal guardian, or other

legal representative or by the minor or incompetent if he was the original applicant.

Section 9. There is a new section to be numbered 62-6219, R.C.M. 1947, which reads as follows:

**62-6219. Treatment and services for intoxicated persons and persons incapacitated by alcohol.** (1) An intoxicated person may come voluntarily to an approved public treatment facility for emergency treatment. A person who appears to be intoxicated in a public place and to be in need of help, if he consents to the proffered help, may be assisted to his home, an approved public treatment facility, an approved private treatment facility, or other health facility by the police.

(2) A person who appears to be incapacitated by alcohol shall be taken into protective custody by the police and forthwith brought to an approved public treatment facility for emergency treatment. If no approved public treatment facility is readily available he shall be taken to an emergency medical service customarily used for incapacitated persons. The police, in detaining the person and in taking him to an approved public treatment facility, is taking him into protective custody and shall make every reasonable effort to protect his health and safety. In taking the person into protective custody, the detaining officer may take reasonable steps to protect himself. No entry or other record may be made to indicate that the person taken into custody under this section has been arrested or charged with a crime.

(3) A person who comes voluntarily or is brought to an approved public treatment facility shall be examined by a licensed physician as soon as possible. He may then be admitted as a patient or referred to another health facility. The referring approved public treatment facility shall arrange for his transportation.

(4) A person who by medical examination is found to be incapacitated by alcohol at the time of his admission or to have become incapacitated at any time after his admission, may not be detained at the facility (1) once he is no longer incapacitated by alcohol, or (2) if he remains incapacitated by alcohol for more than forty-eight (48) hours after admission as a patient, unless he is committed under section 69-6220. A person may consent to remain in the facility as long as the physician in charge believes appropriate.

(5) A person who is not admitted to an approved public treatment facility and is not referred to another health facility, may be taken to his home. If he has no home, the approved public treatment facility shall assist him in obtaining shelter.

(6) If a patient is admitted to an approved public treatment facility, his family or next of kin shall be notified as promptly as possible. If an adult patient who is not incapacitated requests that there be no notification, his request shall be respected.

Section 10. There is a new section to be numbered 69-6220, R.C.M. 1947, which reads as follows:

**69-6220. Emergency commitment.** (1) An intoxicated person who (a)

has threatened, attempted, or inflicted physical harm on another and is likely to inflict physical harm on another unless committed, or (b) is incapacitated by alcohol, may be committed to an approved public treatment facility for emergency treatment. A refusal to undergo treatment does not constitute evidence of lack of judgment as to the need for treatment.

(2) The certifying physician, spouse, guardian, or relative of the person to be committed, or any other responsible person, may make a written application for commitment under this section, directed to the administrator of the approved public treatment facility. The application shall state facts to support the need for emergency treatment and be accompanied by a physician's certificate stating that he has examined the person sought to be committed within two (2) days before the certificate's date and facts supporting the need for emergency treatment. A physician employed by the admitting facility or the department is not eligible to be the certifying physician.

(3) Upon approval of the application by the administrator of the approved public treatment facility, the person shall be brought to the facility by a peace officer, health officer, the applicant for commitment, the patient's spouse, the patient's guardian, or any other interested person. The person shall be retained at the facility to which he was admitted, or transferred to another appropriate public or private treatment facility, until discharged under subsection (5).

(4) The administrator of an approved public treatment facility shall refuse an application if in his opinion the application and certificate fail to sustain the grounds for commitment.

(5) When on the advice of the medical staff the administrator determines that the grounds for commitment no longer exist, he shall discharge a person committed under this section. No person committed under this section may be detained in any treatment facility for more than five (5) days. If a petition for involuntary commitment under section 69-6221 has been filed within the five (5) days and the administrator in charge of an approved public treatment facility finds that grounds for emergency commitment still exist, he may detain the person until the petition has been heard and determined, but no longer than ten (10) days after filing the petition.

(6) A copy of the written application for commitment and of the physician's certificate, and a written explanation of the person's right to counsel, shall be given to the person within twenty-four (24) hours after commitment by the department, who shall provide a reasonable opportunity for the person to consult counsel.

Section 11: There is a new section to be numbered 69-6221, R.C.M. 1947, which reads as follows:

**69-6221. Involuntary commitment of alcoholics.** (1) A person may be committed to the custody of the department of institutions by the district court upon the petition of his spouse or guardian, a relative, the certifying physician, or the chief of any approved public treatment facility. The petition shall allege that the person is an alcoholic who habitually lacks self-control as to the use of alcoholic beverages and that he (a) has



threatened, attempted, or inflicted physical harm on another and that unless committed is likely to inflict physical harm on another; or (b) is incapacitated by alcohol. A refusal to undergo treatment does not constitute evidence of lack of judgment as to the need for treatment. The petition shall be accompanied by a certificate of a licensed physician who has examined the person within two (2) days before submission of the petition, unless the person whose commitment is sought has refused to submit to a medical examination, in which case the fact of refusal shall be alleged in the petition. The certificate shall set forth the physician's findings in support of the allegations of the petition. A physician employed by the admitting facility or the department is not eligible to be the certifying physician.

(2) Upon filing the petition, the court shall fix a date for a hearing no later than ten (10) days after the date the petition was filed. A copy of the petition and of the notice of the hearing, including the date fixed by the court, shall be served on the petitioner, the person whose commitment is sought, his next of kin other than the petitioner, a parent or his legal guardian if he is a minor, the administrator in charge of the approved public treatment facility to which he has been committed for emergency care, and any other person the court believes advisable. A copy of the petition and certificate shall be delivered to each person notified.

(3) At the hearing the court shall hear all relevant testimony, including, if possible, the testimony of at least one licensed physician who has examined the person whose commitment is sought. The person shall have a right to have a licensed physician of his own choosing examine him and testify on his behalf, and if he has no funds with which to pay such physician, the reasonable costs of one such examination and testimony shall be paid by the county. The person shall be present unless the court believes that his presence is likely to be injurious to him; he shall be advised of his right to counsel and, if he is unable to hire his own counsel, the court shall appoint an attorney to represent him at the expense of the county. The court shall examine the person in open court, or if advisable, shall examine the person in chambers. If he refuses an examination by a licensed physician and there is sufficient evidence to believe that the allegations of the petition are true, or if the court believes that more medical evidence is necessary, the court may make a temporary order committing him to the department of institutions for a period of not more than five (5) days for purposes of a diagnostic examination.

(4) If after hearing all relevant evidence, including the results of any diagnostic examination by the department of institutions, the court finds that grounds for involuntary commitment have been established by clear and convincing evidence, it shall make an order of commitment to the department of institutions. It may not order commitment of a person unless it determines that the department of institutions is able to provide adequate and appropriate treatment for him and the treatment is likely to be beneficial.

(5) A person committed under this section shall remain in the custody of the department of institutions for treatment for a period of thirty (30) days unless sooner discharged. At the end of the thirty (30) day period, he shall be discharged automatically unless the department of institutions

before expiration of the period obtains a court order from the district court of the committing district for his recommitment upon the grounds set forth in subsection (1) for a further period of ninety (90) days unless sooner discharged. If a person has been committed because he is an alcoholic likely to inflict physical harm on another, the department of institutions shall apply for recommitment if after examination it is determined that the likelihood still exists.

(6) A person recommitted under subsection (5) who has not been discharged by the department of institutions before the end of the ninety (90) day period shall be discharged at the expiration of that period unless the department of institutions, before expiration of the period, obtains a court order from the district court of the committing district on the grounds set forth in subsection (1) for recommitment for a further period not to exceed ninety (90) days. If a person has been committed because he is an alcoholic likely to inflict physical harm on another, the department shall apply for recommitment if after examination it is determined that the likelihood still exists. Only two (2) recommitment orders under subsections (5) and (6) are permitted.

(7) Upon the filing of a petition for recommitment under subsections (5) or (6), the court shall fix a date for hearing no later than ten (10) days after the date the petition was filed. A copy of the petition and of the notice of hearing, including the date fixed by the court, shall be served on the petitioner, the person whose commitment is sought, his next of kin other than the petitioner, the original petitioner under subsection (1) if different from the petitioner for recommitment, one of his parents or his legal guardian if he is a minor, and any other person the court believes advisable. At the hearing the court shall proceed as provided in subsection (3).

(8) A person committed to the custody of the department of institutions for treatment shall be discharged at any time before the end of the period for which he has been committed if either of the following conditions is met:

(a) in case of an alcoholic committed on the grounds of likelihood of infliction of physical harm upon another, that he is no longer in need of treatment or the likelihood no longer exists; or

(b) in case of an alcoholic committed on the grounds of the need of treatment and incapacity, that the incapacity no longer exists, further treatment will not be likely to bring about significant improvement in the person's condition, or treatment is no longer adequate or appropriate.

(9) The court shall inform the person whose commitment or recommitment is sought of his right to contest the application, be represented by counsel at every stage of any proceedings relating to his commitment and recommitment, and have counsel appointed by the court or provided by the court, if he wants the assistance of counsel and is unable to obtain counsel. If the court believes that the person needs the assistance of counsel, the court shall require, by appointment if necessary, counsel for him regardless of his wishes. The person whose commitment or recommitment is sought shall be informed of his right to be examined

by a licensed physician of his choice. If the person is unable to obtain a licensed physician and requests examination by a physician, the court shall employ a licensed physician.

(10) If a private treatment facility agrees with the request of a competent patient or his parent, sibling, adult child, or guardian to accept the patient for treatment, the department of institutions may transfer him to the private treatment facility.

(11) A person committed under this section may at any time seek to be discharged from commitment by writ of habeas corpus or other appropriate means.

(12) The venue for proceedings under this section is the place in which person to be committed resides or is present.

Section 12. There is a new section to be numbered 69-6222, R.C.M. 1947, which reads as follows:

**69-6222. Records of alcoholics and intoxicated persons.** (1) The registration and other records of treatment facilities shall remain confidential and are privileged to the patient.

(2) Notwithstanding subsection (1), the department may make available information from patients' records for purposes of research into the causes and treatment of alcoholism. Information under this subsection shall not be published in a way that discloses patients' names or other identifying information.

Section 13. There is a new section to be numbered 69-6223, R.C.M. 1947, which reads as follows:

**69-6223. Visitation and communication of patients.** (1) Subject to reasonable rules regarding hours of visitation which the department may adopt, patients in any approved treatment facility shall be granted opportunities for adequate consultation with counsel, and for continuing contact with family and friends consistent with an effective treatment program.

(2) Neither mail nor other communication to or from a patient in any approved treatment facility may be intercepted, read, or censored. The administrator may adopt reasonable rules regarding the use of telephone by patients in approved treatment facilities.

Section 14. There is a new section to be numbered 69-6224, R.C.M. 1947, which reads as follows:

**69-6224. Application of Administrative Procedure Act.** The Administrative Procedure Act applies to and governs all administrative actions taken under this act.

Section 15. Section 4-201, R.C.M. 1947, is amended to read as follows:

**"4-201. Interdiction — order of — effect.** (1) *Where it appears to the satisfaction of a district court that an individual lacks self-control as to the use of alcoholic beverages, or uses alcoholic beverages to the extent that his health is substantially impaired or endangered or his social or economic function is substantially disrupted, the court may make an order*

of interdiction prohibiting the sale of liquor to him until further order; and the court shall cause the order to be forthwith filed with the *department of revenue*.

(2) *On the making of an order for interdiction the interdicted person may forthwith deliver to the department all liquor then in his possession or under his control to be kept for him by the board until the order of interdiction is revoked or set aside, or to be purchased by the department at a price to be fixed by it. All liquor not delivered to the department under this subsection may be confiscated and forfeited to the state.*"

Section 16. Section 11-927, R.C.M. 1947, is amended to read as follows:

**"11-927. Prevention of and punishment for disturbing the peace.** The city or town council has power: To prevent and punish intoxication (*subject to the limits established in section 69-6224*), fights, riots, loud noises, disorderly conduct, obscenity, and acts or conduct calculated to disturb the public peace, or which are offensive to public morals, within the city or town, and within three miles of the limits thereof."

Section 17. Section 4-240, R.C.M. 1947, is amended to read as follows:

**"4-240. License tax on liquor — amount — distribution of proceeds.** The *department of revenue* is hereby authorized and directed to charge, receive and collect at the time of sale and delivery of any liquor under any provisions of the laws of the state of Montana a license tax of *five percent (5%)* of the retail selling price on all liquor so sold and delivered. Said tax shall be charged and collected on all liquor brought into the state and taxed by the *department of revenue*. The retail selling price shall be computed by adding to the cost of said liquor the state markup as designated by said board. Said *five percent (5%)* license tax shall be figured in the same manner as the state excise tax and shall be in addition to said state excise tax. The *department of revenue* shall retain the amount of such *five percent (5%)* license tax so received in a separate account. *Four-fifths (4/5) of these revenues shall be distributed to the counties according to the amount of liquor purchased in each county. One-fifth (1/5) of these revenues shall be deposited in the general fund.* Provided, however, in the case of purchases of liquor by a retail liquor licensee for use in his business, the *department* shall make such regulations as are necessary to apportion that proportion of license tax so generated to the county where the licensed establishment is located, for use as provided in section 4-241, R.C.M. 1947. The *department of revenue* shall pay quarterly to each county treasurer the proportion of the license tax due each county.

The county treasurer of each county shall retain one-fourth ( $\frac{1}{4}$ ) of said license tax, and shall, within thirty (30) days after receipt thereof, apportion the remaining three-fourths ( $\frac{3}{4}$ ) thereof to the treasurers of the incorporated cities and towns within his county, said apportionment to be based in each instance upon the proportion which the gross sale of liquor in such incorporated city or town bears to the gross sale of liquor in all of the incorporated cities and towns in his said county."

Section 18. Section 4-324, R.C.M. 1947, is amended to read as follows:

**"4-324. Tax on imported beer — computation in case of barrels of capacity other than thirty-one gallons.** A tax of three dollars (\$3) per barrel of thirty-one (31) gallons, is hereby levied and imposed on each and every barrel of beer manufactured out of this state and sold herein by any wholesaler, which said tax shall be due at the end of each month from said wholesaler, upon any such beer so sold by him during that month. As to any beer imported and sold in containers other than barrels, or in barrels of more or less capacity than thirty-one (31) gallons, the quantity content shall be ascertained and computed by the *department of revenue* in determining the amount of tax due, as herein provided for. *An additional tax of twenty-five cents (\$.25) per barrel is levied and imposed as provided by this section, and such additional tax is also to be levied and imposed at the same rate upon beer manufactured within the state. The additional tax of twenty-five cents (\$.25) is to be deposited, notwithstanding sections 4-347, 4-347.1, or any other provision, in the general fund."*

Section 19. There is a new section to be numbered 69-6224, R.C.M. 1947, which reads as follows:

**69-6224. Departmental reports to legislature.** The department and the department of institutions shall achieve full implementation of the provisions of the act, as set forth in this chapter and related sections, no later than January 1, 1976. A progress report on the implementation shall be made to the 1975 legislative session. Thereafter the departments shall report, to each legislative session, on the status of the implemented act. This report, or any part thereof, may be included as the department's state plan for alcohol abuse and alcoholism.

Section 20. Sections 4-164 and 69-6202, R.C.M. 1947, are repealed.

Approved March 25, 1974

## CHAPTER NO. 303

AN ACT TO REQUIRE PHYSICIANS AND OTHER PERSONS IN HEALTH CARE PROFESSIONS TREATING VICTIMS OF GUNSHOT WOUNDS AND STABBINGS TO REPORT TO A LAW ENFORCEMENT OFFICER.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is a new section to be numbered 66-1050, R.C.M. 1947, which reads as follows:

**66-1050. Gunshot or stab wounds to be reported.** The physician, nurse, or other person licensed to practice a health care profession, treating the victim of a gunshot wound or stabbing, shall make a report to a law enforcement officer by the fastest possible means. Within twenty-four (24) hours after initial treatment or first observation of the wound, a written report shall be submitted including the name and address of the victim, if known, and shall be sent by regular mail.

Section 2. There is a new section to be numbered 66-1051, R.C.M. 1947, which reads as follows:

66-1051. **Immunity from liability.** A physician or other person reporting pursuant to section 1 [66-1050] shall be presumed to be acting in good faith and in so doing, shall be immune from any liability, civil or criminal, unless he acted in bad faith or with malicious purpose.

Approved March 25, 1974

## CHAPTER NO. 304

AN ACT AMENDING SECTION 11-4103, R.C.M. 1947, TO REQUIRE THE GOVERNING BODY OF A MUNICIPALITY OR COUNTY TO HOLD A PUBLIC HEARING AND DETERMINE PUBLIC INTEREST BEFORE ISSUING INDUSTRIAL DEVELOPMENT BONDS.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 11-4103, R.C.M. 1947, is amended to read as follows:

"11-4103. **Limited obligation bonds — form and contents — sale — negotiability — hearing prior to issuance.** (1) All bonds issued by a municipality or county under the authority of this act shall be limited obligations of the municipality or county. Bonds and interest coupons, issued under the authority of this act, shall not constitute nor give rise to a pecuniary liability of the municipality or county or a charge against its general credit or taxing powers. Such limitation shall be plainly stated upon the face of each of such bonds.

(2) The bonds, referred to in subsection (1) of this section, may (a) be executed and delivered at any time and from time to time, (b) be in such form and denominations, (c) be of such tenor, (d) be in registered or bearer form either as to principal or interest or both, (e) be payable in such installments and at such time or times not exceeding thirty (30) years from their date, (f) be payable at such place or places, (g) bear interest at such rate or rates, payable at such place or places, and evidenced in such manner, (h) be redeemable prior to maturity, with or without premium, and (i) contain such provisions not inconsistent herewith, as shall be deemed for the best interest of the municipality or county and provided for in the proceedings of the governing body whereunder the bonds shall be authorized to be issued.

(3) Any bonds, issued under the authority of this act, may be sold at public or private sale in such manner and at such time or times as may be determined by the governing body to be most advantageous. The municipality or county may pay all expenses, premiums and commissions which the governing body may deem necessary or advantageous in connection with the authorization, sale and issuance thereof from the proceeds of the sale of said bonds or from the revenues of the projects.

(4) All bonds, issued under the authority of this act, and all interest coupons applicable thereto shall be construed to be negotiable instruments, despite the fact that they are payable solely from a specified source.

(5) *Prior to the issuance of any bonds, under the authority of this act, by any municipality or county, the governing body shall give notice and hold a public hearing on the proposed project. At least once a week for three (3) consecutive weeks prior to the date set for the hearing, the governing body shall publish in a newspaper of general circulation in the municipality or county a notice of the time and place of the hearing. The governing body shall not approve the bonds as provided in this act unless it appears, after the public hearing, that such approval is in the public interest of the municipality or county."*

Approved March 25, 1974

## CHAPTER NO. 305

AN ACT TO CODIFY THE EXISTENCE OF THE LEGISLATIVE INTERN PROGRAM TO BE KNOWN AS THE "LEGISLATIVE INTERN ACT OF 1974"; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is a new section to be numbered 43-720, R.C.M. 1947, which reads as follows:

43-720. **Popular name.** This act shall be known as the "Legislative Intern Act of 1974."

Section 2. There is a new section to be numbered 43-721 R.C.M. 1947, which reads as follows:

43-721. **Establishment of program.** It is declared to be the public policy of this state that there be a legislative intern program open to students attending the university of Montana, Montana state university, eastern Montana college, northern Montana college, western Montana college, Montana college of mineral science and technology. The private colleges of higher education in the state may also establish an intern program for the purposes of this act.

Section 3. There is a new section to be numbered 43-722 R.C.M. 1947, which reads as follows:

43-722. **Term of service.** Each legislative intern shall serve for ten (10) weeks during the regular session of the legislature.

Section 4. There is a new section to be numbered 43-723 R.C.M. 1947, which reads as follows:

43-723. **Number of interns — where from.** All institutions referred

to in section 2 [43-721] may have at least one intern. An additional five (5) positions may be chosen from applications submitted to the legislative council.

Section 5. There is a new section to be numbered 43-724 R.C.M. 1947, which reads as follows:

43-724. **Selection by schools.** The legislative interns shall be named by the presidents of the several colleges and universities. The students so selected may be enrolled in any program offered by the college or university.

Section 6. There is a new section to be numbered 43-725, R.C.M. 1947, which reads as follows:

43-725. **Intern qualifications.** The legislative interns must have the following qualifications:

- (1) at least one (1) quarter of "state government" or its equivalent as a course of study at an institution of higher learning;
- (2) reached at least the level of a junior at an institution of higher learning;
- (3) exhibit the necessary degree of scholastic achievement, leadership, and involvement in community affairs; and
- (4) preference shall be given to Montana high school graduates.

Section 7. There is a new section to be numbered 43-726 R.C.M. 1947, which reads as follows:

43-726. **Assignment of interns.** Each legislative intern is assigned to a legislator by the legislative council.

Section 8. There is a new section to be numbered 43-727 R.C.M. 1947, which reads as follows:

43-727. **Legislative council — establish guidelines.** Each legislative intern is subject to guidelines established by the legislative council.

Section 9. There is a new section to be numbered 43-728 R.C.M. 1947, which reads as follows:

43-728. **Interns responsible to sponsor.** Each legislative intern is directly responsible to his or her legislator.

Section 10. There is a new section to be numbered 43-729 R.C.M. 1947, which reads as follows:

43-729. **Program not mandatory.** An institution of higher learning may choose not to participate in the legislative intern program.

Section 11. There is a new section to be numbered 43-731, R.C.M. 1947, which reads as follows:

43-731. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.



Section 12. There is a new section to be numbered 43-730 R.C.M. 1947, which reads as follows:

43-730. **Funding not obligatory.** The legislature shall not, under any condition, because of this act, be obligated to fund this internship program.

Section 13. This act is effective on its passage and approval.

Approved March 25, 1974

## CHAPTER NO. 306

AN ACT TO AMEND SECTIONS 75-5811 AND 75-6104, R.C.M. 1947, TO ALLOW A COUNTY SUPERINTENDENT OF SCHOOLS TO APPOINT A LEGAL ADVISOR TO ASSIST IN CASES RELATING TO THE DISMISSAL OF TEACHERS UNDER CONTRACT AND THE TERMINATION OF TENURE TEACHERS; AND PROVIDING FOR APPEALS.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 75-5811, R.C.M. 1947, is amended to read as follows:

"75-5811. **Controversy appeals and hearings.** The county superintendent shall hear and decide all matters of controversy arising in his county as a result of decisions of the trustees of a district in the county. *When appeals are made under section 75-6104 relating to the termination of services of a tenure teacher or under section 75-6107 relating to the dismissal of a teacher under contract, the county superintendent may appoint a qualified attorney at law to act as a legal advisor who shall assist the superintendent in preparing findings of fact and conclusions of law. Subsequently, either the teacher or trustees may appeal to the superintendent of public instruction under the provisions for appeal of controversies in this Title.* Furthermore, he shall hear and decide all controversies arising under:

(1) section 75-6315 or 75-6316 relating to the approval of tuition applications; or

(2) any other provision of this Title for which a procedure for resolving controversies is not expressly prescribed.

The county superintendent shall hear the appeal and take testimony in order to determine the facts related to the controversy and may administer oaths to the witnesses that testify at the hearing. He shall prepare a written transcript of the hearing proceedings. The decision on the matter of controversy which is made by the county superintendent shall be based upon the facts established at such hearing.

The decision of the county superintendent may be appealed to the superintendent of public instruction and, if it is appealed, the county super-

intendent shall supply a transcript of the hearing and any other documents entered as testimony at the hearing to the superintendent of public instruction."

Section 2. Section 75-6104, R.C.M. 1947, is amended to read as follows:

"75-6104. **Termination of tenure teacher services.** Whenever the trustees of any district resolve to terminate the services of a tenure teacher under the provisions of subsection (1) of section 75-6103, they shall notify such teacher in writing before the first day of April of such termination. Any tenure teacher who receives a notice of termination may request, in writing ten (10) days after the receipt of such notice, a written statement declaring clearly and explicitly the specific reason or reasons for the termination of his services, and the trustees shall supply such statement within ten (10) days after the request. Within ten (10) days after the tenure teacher receives the statement of reasons for termination, he may request in writing a hearing before the trustees to reconsider their termination action. When a hearing is requested, the trustees shall conduct such a hearing and reconsider their termination action within ten (10) days after the receipt of the request for a hearing. If the trustees affirm their decision to terminate the teacher's employment, the tenure teacher may appeal their decision to the county superintendent *who may appoint a qualified attorney at law as legal advisor who shall assist the superintendent in preparing findings of fact and conclusions of law.* Subsequently, either the teacher or the trustees may appeal to the superintendent of public instruction under the provision for the appeal of controversies in this Title."

Approved March 25, 1974

## CHAPTER NO. 307

### AN ACT TO CREATE A MONTANA WORK-STUDY PROGRAM TO BE ADMINISTERED BY THE BOARD OF REGENTS OF HIGHER EDUCATION.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is a new section to be numbered 75-9101, R.C.M. 1947, which reads as follows:

75-9101. **Purpose.** It is the purpose of this act to help ensure that no resident of Montana be denied attendance at institutions governed, supervised or coordinated by the board of regents of higher education because of financial barriers; and further to provide low-cost supplemental assistance for all governing units within Montana. The legislature intends that any Montana resident wishing to gain admittance to such institutions in Montana, within necessary budgetary limitations as provided by law, shall be allowed the opportunity to earn in part or in total sufficient

money to pay the costs accompanying such attendance through employment by state and local governing units, and certain public interest organizations.

Section 2. There is a new section to be numbered 75-9102, R.C.M. 1947, which reads as follows:

75-9102. **Definitions.** As used in this act, unless the context otherwise requires:

(1) "Institution" means any public institution of post-secondary education governed, supervised or coordinated by the board of regents of higher education.

(2) "Student" means any Montana resident, as established by the board of regents of higher education, who has met the qualifications for enrollment as a full-time student at an institution, or who is presently enrolled as a full-time student in good standing, as determined by the institution.

Section 3. There is a new section to be numbered 75-9103, R.C.M. 1947, which reads as follows:

75-9103. **Montana work-study program.** The Montana work-study program is hereby established to be administered by the board of regents of higher education as provided by this act.

Section 4. There is a new section to be numbered 75-9104, R.C.M. 1947, which reads as follows:

75-9104. **Limitation on use of funds.** No less than seventy percent (70%) of the funds allocated to the program shall be used to provide job opportunities for students with demonstrated financial need. The remainder of the funds allocated to this program may be used to provide job opportunities on a basis other than financial need. Such other bases include but are not limited to:

(1) laboratory, teaching and tutorial assistantships requiring particular skills, and

(2) cases in which a student's family cannot demonstrate financial need but in which the student has a desire to contribute toward his education through employment.

Section 5. There is a new section to be numbered 75-9105, R.C.M. 1947, which reads as follows:

75-9105. **Funds supplemental to other funds.** All funds allocated through this program are supplemental in nature and are not meant to replace existing federal and state student financial assistance funds, or any other funds that would otherwise be appropriated for student assistance.

Section 6. There is a new section to be numbered 75-9106, R.C.M. 1947, which reads as follows:

75-9106. **Administration.** The board of regents of higher education shall promulgate rules for the allocation of program funds among the institutions.

Section 7. There is a new section to be numbered 75-9107, R.C.M. 1947, which reads as follows:

75-9107. **Eligibility.** Any local governing body, state or local administrative agency, department, board, commission, judicial, legislative, or other governmental unit or non-profit private organization is eligible to employ Montana students under the program as determined by the board of regents of higher education and within the funding limitations of the program which eligibility:

(1) will not result in the displacement of employed workers or impair existing contracts for services;

(2) will not involve any partisan or non-partisan political activity associated with a candidate or contending group or factor in an election for public or party office;

(3) will not involve the construction, operation or maintenance of so much of any facility as is used or to be used for sectarian instruction or as a place of worship, and

(4) in the case of non-profit organizations other than governmental units, will result in employment which is in the general public interest rather than in the interest of a particular group.

Section 8. There is a new section to be numbered 75-9108, R.C.M. 1947, which reads as follows:

75-9108. **Anti-discrimination.** No employer is eligible to employ any person under this program which employer practices discrimination in employment against any individual because of race, religion, color, sex, or national origin.

Section 9. There is a new section to be numbered 75-9109, R.C.M. 1947, which reads as follows:

75-9109. **Approval of salaries.** The salaries paid to students employed under this program and the number of hours each student works shall be approved by institution officers administering the program subject to guidelines promulgated by the board of regents of higher education; provided that in no case will any student employed under the program be paid less than the minimum wage as provided by law.

Section 10. There is a new section to be numbered 75-9110, R.C.M. 1947, which reads as follows:

75-9110. **Contributions from employers.** Each employer must contribute toward the salary of each student employed under the program at a level determined by the board of regents of higher education but at a level no less than thirty percent (30%) of the student's hourly wage.

Section 11. There is a new section to be numbered 75-9111, R.C.M. 1947, which reads as follows:

75-9111. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from invalid applications.

Approved March 25, 1974

## CHAPTER NO. 308

AN ACT TO AMEND SECTION 66-1508, R.C.M. 1947, TO PROVIDE

FOR A LATE RENEWAL FEE FOR CERTIFIED PHARMACY  
LICENSES.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 66-1508, R.C.M. 1947, is amended to read as follows:

**"66-1508. Store license — certified pharmacy license — suspension or revocation.** (a) The state board of pharmacy shall upon application upon such forms as it may prescribe and upon the payment of an annual fee of five dollars (\$5.00), license stores other than a pharmacy wherein may be sold ordinary household or medicinal drugs prepared in sealed packages or bottles by a manufacturer, qualified under the laws of the state wherein such manufacturer resides. The name and address of such manufacturer shall appear conspicuously on each package sold by such licensee. It shall be unlawful for any such store to sell, deliver or give away such household medicinal drugs, without first having secured such license and thereafter keeping the same in force by proper renewal, provided, also, that nothing herein shall be construed to prevent any vendor from selling any patent or proprietary medicine in the original package when plainly labeled, nor such nonmedical articles as are usually sold by such vendors.

(b) The state board of pharmacy shall require and provide for the annual registration and licensing of every pharmacy now or hereafter doing business within this state within the meaning of the act. Upon presentation of evidence satisfactory to the board and upon application upon such form as the board may prescribe and upon the payment of an annual fee of twenty dollars (\$20), the board shall license any pharmacy as a "CERTIFIED PHARMACY," provided, however, that such license shall be granted only to such pharmacies as are operated by registered pharmacists or registered interns qualified as herein prescribed. *Any default in the payment of such renewal fee for a period of thirty (30) days after the date the same is due shall increase the renewal fee to the sum of forty dollars (\$40).* Such license must be exposed in a conspicuous place in the pharmacy for which it is issued, and shall expire on the thirtieth day of June following the date of issue. It shall be unlawful for any person to conduct such pharmacy, to use the word pharmacy to identify his business or to use the word pharmacy in any advertising unless such license has been duly issued and is in full force and effect.

(c) The board may suspend, revoke or refuse to renew any store or pharmacy license obtained by false representation, or fraud of any character, or when the pharmacy for which the license shall have been issued is kept open for the transaction of business without a pharmacist in charge thereof, or when the person to whom the license shall have been granted has been convicted for violation of any of the provisions of the act or for a felony, or convicted for any violation of the Federal Food, Drug and Cosmetic Act of June 25, 1938, (52 United States Statutes at Large, 1040 through 1059; Title 21, United States Code, sections 301-392 as from time to time revised, amended, and supplemented), or, if a natural

person, whose pharmacist or intern license has been revoked, or when the store or pharmacy is conducted in violation of the provisions of this act. Before any license can be revoked the holder thereof shall be entitled to a hearing by the board after reasonable notice, and judicial review of the action of the board."

Approved March 25, 1974

## CHAPTER NO. 309

AN ACT TO AMEND SECTION 71-501 AND 71-508, R.C.M. 1947, TO REMOVE THE REQUIREMENT THAT COUNTIES SUPPLEMENT INSUFFICIENT STATE APPROPRIATIONS FOR AID TO DEPENDENT CHILDREN, TO MAKE THE CHILD OF UNEMPLOYED PARENTS ELIGIBLE FOR WELFARE BENEFITS AND TO REPEAL SECTION 71-508.1, R.C.M. 1947; AND TO PROVIDE AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 71-501, R.C.M. 1947, is amended to read as follows:

"71-501. **"Dependent child" defined.** The term "dependent child" *for welfare purposes* means (A) a child under the age of eighteen (18), or (B) *a person* under the age of twenty-one (21) who is a student under the regulations prescribed by the state department. *Such* children (A and B above) *must be* deprived of parental support or care by reason of the death, continued absence from the home, *continued unemployment*, or physical or mental incapacity of a parent, and who is living with his father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, nephew, niece, or first cousin, in a place of residence maintained by one or more of such relatives as his or their own home.

Aid to dependent children shall not be denied to or for the care of children who would otherwise be entitled to such aid under the laws of the state of Montana by the fact that such child is living in the home of his or her father, who is in the opinion of the county board of public welfare of the appropriate county either unemployable or who is honestly and responsibly seeking proper employment and is unable to find such employment nor by the fact that such child is living in the home of a head of a household who is, at the time, receiving job training under the laws of the state of Montana; nor shall the benefits which would otherwise accrue to such child for aid to dependent children under the laws of the state of Montana be reduced by reason of any such cause.

Primary factors in determining whether or not a father is honestly and responsibly seeking employment shall include his willingness to register for employment with the Montana state employment service if the Montana state employment service has a representative in his county of resi-

dence and his willingness to accept employment in which he is able to engage which will increase his ability to maintain himself and his family.

The department of public welfare may establish additional criteria for determining whether or not a father is honestly and responsibly seeking employment."

Section 2. Section 71-508, R.C.M. 1947, is amended to read as follows:

"71-508. **County share of participation.** Each county department shall reimburse the state department in the amount of one-third ( $\frac{1}{3}$ ) of the approved aid to dependent children grants exclusive of the federal share."

Section 3. Section 71-508.1, R.C.M. 1947, is repealed.

Section 4. This act shall be effective July 1, 1975.

Approved March 26, 1974

## CHAPTER NO. 310

### AN ACT FOR REVISION OF THE LAWS RELATING TO THE DEPARTMENT OF LIVESTOCK.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 3-2301, R.C.M. 1947, is amended to read as follows:

"3-2301. **Egg dealer's license — fee.** A person *who buys, sells, or deals* in eggs, except a person or firm who *does not* buy and sell at retail more than an average of 25 cases of eggs per month for any one year, other than those produced by fowl owned by *the person*, shall obtain a license from the *department of livestock* for each establishment at which business is conducted, and shall *send to the department the reports which are requested by the department*. The fee for *the* license is five dollars (\$5) per year for dealers buying eggs for sale at retail. The fee for *the* license is fifty dollars (\$50) per year for dealers buying eggs for resale at wholesale. All licenses shall be posted in a conspicuous place in each place of business. Licenses expire March 31 each year after the date of issuance."

Section 2. Section 3-2302, R.C.M. 1947, is amended to read as follows:

"3-2302. **Remittance of fees.** All license fees shall be remitted to the department of *livestock which* shall deposit them in the state treasury to the credit of the general fund."

Section 3. Section 3-2308, R.C.M. 1947, is amended to read as follows:

"3-2308. **Notice to purchaser of grade of eggs.** It is unlawful for a person to sell, offer, or expose for sale at wholesale or retail any eggs for human consumption, without notifying the person purchasing or

intending to purchase the *eggs*, of the exact grade or quality and size or weight of *the eggs*, according to the standards prescribed by the department of livestock, by stamping or printing on the container of *the eggs*, *the grade or quality and size or weight*, and *if the eggs* are offered for sale in bulk, without also displaying in a conspicuous place at the point where *the eggs* are offered or exposed for sale, a placard or sign printed in letters two (2) inches high, giving *the grade, quality, size, weight, and date of grading*. *This act does not affect the sale of eggs by the producers when the consumer purchases the eggs at the place of production.*"

Section 4. Section 3-2309, R.C.M. 1947, is amended to read as follows:

"3-2309. **Invoice to show grade of eggs.** Every person other than the producer, except persons or firms who do not sell more than 25 cases of eggs per month, *who sells eggs to a retailer shall furnish to the retailer an invoice showing the exact grade or quality of the eggs according to standards prescribed by the department of livestock.*"

Section 5. Section 3-2310, R.C.M. 1947, is amended to read as follows:

"3-2310. **Rules to be adopted by department of livestock.** *The department of livestock shall enforce this act and adopt rules necessary for the enforcement of this act, including rules for the processing, handling, and marketing of egg products whether shell, liquid, frozen, or dried.*"

Section 6. Section 3-2313, R.C.M. 1947, is amended to read as follows:

"3-2313. **Licensed egg graders.** *Wholesale and retail dealers who handle more than twenty-five (25) cases of eggs per month supplying eggs to consumers may employ only experienced and licensed graders. The fee for a grader's license is five dollars (\$5) per year. All candlers and graders must pass an examination required by the department of livestock. The license expires March 31 each year after the date of issuance.*"

Section 7. Section 3-2314, R.C.M. 1947, is amended to read as follows:

"3-2314. **Revocation of license.** *A license issued by the department of livestock under this chapter may be revoked by the department when the holder of the license fails to comply with the laws of this state which apply to the conduct of his business under the license. If a firm, person, or corporation whose license has been revoked by the department continues to buy, sell, or deal in eggs without a license, he is guilty of a misdemeanor and is subject to the penalties provided for in section 3-2311.*"

Section 8. Section 3-2404, R.C.M. 1947, is amended to read as follows:

"3-2404. **Definitions of terms.** For the purpose of this act, the following definitions are adopted:

(1) Butter is the clean, nonrancid product made by gathering the fat of fresh ripened milk or cream into a mass which also contains a small portion of the other milk constituents, with or without salt, and must contain not less than eighty percent (80%) of milk fat. No tolerance for deficiency in milk fat is permitted. Butter may also contain added coloring matter.

(2) Renovated butter or process butter is the product made by melting



and reworking, without the addition or use of chemicals or substances except whole milk, cream, or salt, and must contain not less than eighty *percent (80%)* of milk fat.

(3) Cheese is the sound, solid, and ripened product made from milk or cream by coagulating the casein with rennet or lactic acid, with or without ripening ferments and seasoning, and must contain in the water free substance, not less than fifty *percent (50%)* of milk fat, and not more than thirty-nine *percent (39%)* of moisture. Cheese may also contain added coloring matter.

(4) Skimmed milk cheese is the sound, solid, and ripened product made from skim milk by coagulating the casein with rennet or lactic acid, with or without ripening ferments and seasoning.

(5) Ice cream is a frozen product made with pure, sweet milk, cream, skim milk, evaporated or condensed milk, evaporated or condensed skim milk, dry milk, dry skim milk, pure milk fat, or wholesome sweet butter, or any combination of *these* products, with or without sweetening, clean wholesome eggs or egg products, with or without the use of harmless flavoring and coloring. Ice cream must contain not less than ten *percent (10%)* of milk fat, not less than thirty-three *percent (33%)* total solids, and may or may not contain pure and harmless edible stabilizer. Ice cream may contain not to exceed one *percent (1%)* gelatin. No frozen milk or milk product *may* be manufactured or sold unless it contains at least ten *percent (10%)* butterfat, excepting sherbets, ices, and other exceptions *under this* section. All ice cream must be manufactured from pasteurized ice cream mix.

(6) Fruit ice cream shall conform to the requirements of ice cream, except that the fruit ingredients must be from sound, clean, and mature fruit, and it must contain not less than nine *percent (9%)* of milk fat.

(7) French ice cream, French custard ice cream, cooked ice cream, ice custard, parfaits, and similar frozen products, *except* sherbets and water ices, are varieties of ice cream.

(8) Ice cream mix is a pasteurized, unfrozen product used in the manufacture of ice cream and must comply with the requirements for ice cream.

(9) Milk sherbet *is* the pure, clean, frozen product made from milk product, water, and sugar, with harmless fruit or fruit juice flavoring and with or without harmless coloring, which must contain not less than 0.35 of one *percent (0.35%)* of acid, as determined by titrating with standard alkali and expressed as lactic acid, and with or without added stabilizer composed of wholesome edible material. It must contain not less than four *percent (4%)* by weight of solids.

(10) Ice or ice sherbet *is* the pure, clean, frozen product made from water and sugar with harmless fruit or fruit juice flavoring, and with or without harmless coloring, and must not contain less than 0.35 of one *percent (0.35%)* of acid, as determined by titrating with standard alkali and expressed as lactic acid, and with or without added stabilizer composed of wholesome edible material. It must contain no milk solids.

(11) A creamery is a place where the milk or cream furnished by three

(3) or more persons is used for the manufacture into butter for commercial purposes.

(12) A cheese factory is a place where milk furnished by three (3) or more persons is made into cheese for commercial purposes.

(13) An ice cream factory is a place where ice cream mix is frozen into ice cream for commercial purposes.

(14) An ice cream mix factory is a place where ice cream mix is made.

(15) A milk or cream buying or collecting station is a place where milk or cream is bought or collected for shipment or delivery to a creamery or to a person intending to make use of it for commercial purposes.

(16) *Person* includes persons, whether natural or artificial, including firms, copartnerships, corporations, and marketing associations of every description.

(17) The term "department" unless otherwise indicated, *means* the department of livestock provided for in Title 82A, chapter 13.

(18) It is unlawful for a person, firm, or corporation, its servant or agent, to manufacture, sell, expose, offer for sale, or exchange butter or other substance or commodity defined in this act containing less butterfat or other ingredient than required by this act. A violator is guilty of a misdemeanor and is punishable under section 3-2460."

Section 9. Section 3-2488, R.C.M. 1947, is amended to read as follows:

"3-2488. **General authority of department.** The *department* may regulate, and establish sanitation standards for persons operating dairies producing milk for manufacturing purposes. The *department* may regulate, and establish sanitation and quality standards for a person engaged in the processing of manufactured dairy products, or of products made or sold in the semblance or imitation of *dairy products*, in this state when those products made in semblance or imitation of dairy products are made in a manufactured dairy products plant."

Section 10. Section 3-2489, R.C.M. 1947, is amended to read as follows:

"3-2489. **Promulgation of minimum standards for milk or cream.** The *department* may adopt minimum standards for milk and cream used for manufacturing purposes; its production, transportation, grading, testing, use, processing, and the packaging, and storage of manufactured dairy products."

Section 11. Section 3-2490, R.C.M. 1947, is amended to read as follows:

"3-2490. **Licensing of persons engaged in production of milk.** (1) The *department* may license persons engaged in the production of milk for manufacturing purposes and license persons who manufacture dairy products, or products made in their semblance or imitation when the products are made in a manufactured dairy products plant.

(2) The *department* may examine and license weighers, graders,

samplers, and milk and cream testers in order to establish the qualifications of *these* persons to perform those operations or tests for which *the* licenses are issued."

Section 12. Section 3-2491, R.C.M. 1947, is amended to read as follows:

"3-2491. **Hearings — suspension, revocation or denial of license.** The *department may* hold hearings *on* the suspension, revocation, or denial of licenses; and, for good cause, after notice and opportunity for hearing, may suspend, revoke, or deny licenses issued under this act."

Section 13. Section 3-2492, R.C.M. 1947, is amended to read as follows:

"3-2492. **Required records and reports — examination.** The *department may* require dairies and dairy product manufacturers to maintain and produce for examination, or to report, *the* records necessary for carrying out *its* duties under this act."

Section 14. Section 3-2493, R.C.M. 1947, is amended to read as follows:

"3-2493. **Enforcement of laws and rules — violation as misdemeanor.** (1) The *department* shall supervise and enforce the laws and rules which *pertain* to the standards of quality and sanitation of cream, whole milk, skimmed milk, condensed milk, evaporated milk, and food additives used in manufacturing dairy products, and of manufactured dairy products.

(2) Rules *adopted* under this act have the effect of law, and violation of *these* rules *is* a misdemeanor, punishable as provided in the general penalties section of the act, unless a specific penalty has been provided."

Section 15. Section 3-2495, R.C.M. 1947, is amended to read as follows:

"3-2495. **New or amended rules — mailing — hearing — judicial review.** (1) Every new or amended rule proposed by the *department* under this act shall be mailed to each person licensed *under this act* who will be affected by *the* rule, at least forty-five (45) days *before* the date on which the rule *becomes* effective.

(2) *On* application in writing filed at least fifteen (15) days before the effective date of *the* proposal, by a person licensed *under this act*, the *department* shall vacate the effective date of *the* proposed rule and hold a public hearing on and take evidence concerning *it*. Within thirty (30) days after the conclusion of *the* hearing the *department* shall make written findings and conclusions and a written decision based *on the hearing*, determining whether *the* rule shall be *adopted*. A new or amended rule *adopted* following *the* hearing and conclusion *may not* take effect until ninety (90) days after the date of *the* decision.

(3) The district court of the first judicial district *has* jurisdiction to review, modify, or set aside *a* decision *adopting* a new or amended rule under this act *on* petition made to it at any time *before* the effective date of *the* rule by a person claiming to be adversely affected by *the* decision."

Section 16. Section 3-2496, R.C.M. 1947, is amended to read as follows:

**"3-2496. Investigation of complaints and violations — injunction.** The *department shall* provide for periodic inspections and investigations to disclose violations of this act or of *rules adopted* under this act. *The department shall* receive and provide for the investigation of complaints and request the institution and prosecution of civil or criminal actions, or both. *This act adopted under it* may be enforced by injunction in a court having jurisdiction to grant injunctive relief. *An adulterated, impure, contaminated, misbranded, condemned, or mislabeled article or product* involved in a violation of this act or of *the rules adopted* under this act *is* subject to seizure and disposition *under* an order of the court."

Section 17. Section 3-2497, R.C.M. 1947, is amended to read as follows:

**"3-2497. Definitions.** Unless the context *requires* otherwise *in this act*:

(1) *"Department"* means the department of livestock, *provided for in Title 82A, chapter 13.*

(2) *"Milk"* and *"cream"* mean milk and cream sold, used, or intended for manufacturing purposes or for conversion into products of a form other than the form in which originally produced or products commonly known as, but not limited to:

- (a) Butter.
- (b) Cheese, including cottage cheese, low-fat cottage cheese, cheese curd, and cream cheese which are either cultured or directly acidified, and cheese dressings.
- (c) Ice cream or its mix.
- (d) Frozen dessert or its mix.
- (e) Sherbet of all kinds or their mixes.
- (f) Frozen ice cream bars, sandwiches, cones, and similar novelties.
- (g) Frozen desserts or products made in the semblance or imitation of frozen dessert.
- (h) Frozen confections or their mixes.
- (i) Water ices or their mixes.
- (j) Ice milk or its mix.
- (k) French ice cream, French custard, or their mixes.
- (l) Frozen custard or its mix and frozen yogurt.
- (m) Yogurt, flavored yogurt, and low-fat yogurt.
- (n) Sour cream—either cultured or directly acidified.
- (o) Cream cheese—either cultured or directly acidified.

(p) Buttermilk—either cultured, from churned butter, or directly acidified.

(q) Eggnog, low-fat eggnog, eggnog flavored milk, whipped cream, flavored toppings, and similar flavored products.

(r) Dry or powdered milk.

(s) Condensed milk products.

(3) The items specified in subsections (2) of this section, (a) through (s) shall conform to the standards of identity set forth in the Code of Federal Regulations. If standards of identity are not set forth in the code, then the standards adopted by the department prevail. The labeling of manufactured dairy products shall be in accordance with the Montana Food, Drug and Cosmetic Act.

(4) "Manufactured dairy product" means an item enumerated in subsection (3), or any other dairy product made by incorporating milk or cream or converting milk or cream into a different state of appearance or quality.

(5) "Manufactured dairy products plant" or "factory" means a place where milk or cream is collected, and converted into a product, or into a different state of appearance or quality or which manufactures those products listed in subsection (2). If only products of semblance or imitation of dairy products are made; the plant is not considered as a manufactured dairy products plant.

(6) "Creamery" means a place where butter is made for commercial purposes.

(7) "Cheese factory" means a place where cheese including cream cheese, cottage cheese, creamed cottage cheese, cheese curd, cottage cheese dressing, and low-fat counterparts of cheese either cultured or directly acidified are made for commercial purposes.

(8) "Frozen dessert plant" means a place where products named in subsection (2)(c) through (2)(i), of this section are made for commercial purposes.

(9) "Cream station" means a place other than a creamery where deliveries of milk or cream are weighed, graded, sampled, tested, or collected for purchase.

(10) "Dairy" or "dairy farm" means a place where one (1) or more cows or goats are kept, a part or all of the milk or cream from which is used for manufacturing purposes.

(11) "Milk" means the lacteal secretion, practically free from colostrum, obtained by the milking of one (1) or more healthy cows located in modified accredited areas and modified certified areas or from cows in herds fully accredited as tuberculosis free by the United States Department of Agriculture or in the process of being accredited when the milk or cream is sold for use in, intended for use in, or used in a manufactured dairy product.

(12) "*Cream*" means the milk fat which rises to the surface when milk is allowed to stand, or which is separated from milk by centrifugal force when sold, used, or intended for use in a manufactured product.

(13) "*Raw milk*" or "*raw milk products*" means milk or milk products which have not been treated by a process of pasteurization.

(14) "*Person*" means an individual, firm, partnership, corporation, co-operative, or other business unit or trade device.

(15) "*Pasteurization*," "*pasteurizing*," and similar terms mean the process of heating every particle of milk or milk product to at least 145 degrees F., and holding it continuously at or above this temperature for at least thirty (30) minutes, or to at least 161 degrees F., and holding it continuously at or above this temperature for at least fifteen (15) seconds, in equipment which is properly operated and approved by the department. Milk products that have a higher fat content than milk or contain added sweeteners shall be heated to at least 155 degrees F., and held continuously at or above this temperature for at least thirty (30) minutes, or to at least 175 degrees F., and held continuously at or above this temperature for at least twenty-five (25) seconds. This definition does not bar any other pasteurization process which has been recognized by the United States Public Health Service to be equally effective and which is approved by the department.

(16) "*Agent*" means a person who is authorized by another person to act for him in dealing with a third person.

(17) "*Grading*" means the examination of milk, cream, or products, by sight, odor, taste, or laboratory analysis, the results of which determine a grade designating their quality.

(18) "*Testing*," "*test*," "*tested*" and similar words mean the examination of milk, cream, or manufactured dairy products by sight, odor, taste, or biological or chemical laboratory analysis to determine their quality, wholesomeness, or composition.

(19) "*Safe temperature*" means 45 degrees F., or less, unless the product is frozen, in which case the temperature must be at or below 0 degrees F.

(20) "*Producer*" means the person who exercises control over the production of milk or cream, delivered to a milk or cream receiving station or manufactured dairy products plant, or who receives payment for milk or cream used in manufacturing.

(21) "*Mix*" includes the liquid, unfrozen product from which those frozen products listed under subsection (2)(c) through (2)(e), and (2)(g) through (2)(e) are made.

(22) For purposes of reporting production, and licensing, "manufactured dairy product" includes, but is not limited to:

(a) Ice cream or its mix.

(b) French ice cream, custard ice cream, French custard ice cream, their low-fat counterparts, or their mixes.

(c) Sherbets of all kinds or their mixes.

(d) Animal or vegetable fat frozen desserts or their mixes.

(e) Frozen confections or their mixes when made in a manufactured dairy products plant.

(f) Water ices or their mixes.

(g) Frozen dessert sandwiches, bars, cones, and similar novelties.

(h) Frozen dessert made of non-dairy origins, and other products made in the semblance or imitation of dairy products or their mixes when made in a manufactured dairy products plant.

(i) Ice milk or its mix.

(j) Cheese of all kinds including cottage cheese, cheese curd, cheese dressing, and cream cheese either cultured or directly acidified.

(k) Sour cream when cultured or directly acidified.

(l) Eggnog, low-fat eggnog, eggnog flavored milk, and similar flavored products.

(m) Buttermilk, cultured, or from churned butter, or directly acidified.

(n) Butter.

(o) Yogurt — low-fat yogurt, flavored yogurt, either cultured or directly acidified, or frozen.

(23) "Official test" means test procedures outlined in the sources referred to under section 3-2498 of samples, methods, rules of evidence.

(24) "Water ice" means a frozen product, containing, but not limited to, the following ingredients: water, sugar, flavoring, coloring, stabilizers, and other ingredients allowed by the Code of Federal Regulations as optional ingredients.

(25) "C.I.P." means the procedure by which sanitary pipelines or pieces of dairy equipment are mechanically cleaned in place by circulation and when this procedure meets the 3-A accepted practices for permanently installed sanitary product-pipelines and cleaning systems.

(26) "Filled dairy products" means milk, cream, or skimmed milk, or any combination of these, whether or not condensed, evaporated, concentrated, frozen, powdered, dried, or desiccated, or any food product made or manufactured from them, to which has been added, or which has been blended or compounded with, fat or oil other than milk fat, so that the resulting product is in imitation or semblance of a dairy product, including milk, cream, sour cream, skimmed milk, ice cream, low-fat ice cream, whipped cream, flavored milk or skim milk yogurt, dried or powdered milk, cheese, cream, cream cheese, cottage cheese, creamed cottage cheese, ice cream mix, low-fat ice cream mix, sherbet, condensed milk, evaporated milk, or concentrated milk.

(27) "Intrastate commerce" means commerce within this state under the jurisdiction of the state, and includes the operation of a business or service establishment.

(28) "Code of Federal Regulations" Title 21 which contains the defini-

tions and standards of identity for products as established by the Food and Drug Administration, United States Department of Health, Education and Welfare.

(29) "*Culture*" means the harmless lactic acid fermenting bacteria which are added to milk or cream to make manufactured dairy products *like* cultured buttermilk, cheese, cottage cheese, yogurt, sour cream, cream cheese, butter, and other similar products.

(30) "*Direct acidification* — directly acidified," and similar terms *mean* the process of adding a food grade acid to milk or cream *instead* of or in addition to the adding of culture.

(31) "*Mislabeled*," "unwholesome," "food additives," "optional ingredients," "impure," "misbranded," "contaminated," "adulterated," "perishable," "hazardous," "unfit," "spoiled," "damaged," and similar terms, when applied to a manufactured dairy product or product made in semblance or in imitation of a manufactured dairy product, *are as defined* in sections 27-701 to 27-723."

Section 18. Section 3-2498, R.C.M. 1947, is amended to read as follows:

"3-2498. **Tests and analyses — admissibility as evidence.** (1) The department may require a chemist, biologist, microbiologist, serologist, or other qualified employee of the department of health *and environmental sciences* or other laboratory approved by the *department*, to test or analyze samples of milk, cream, manufactured dairy products, or products made in the semblance or imitation of *these* products.

(2) Any appropriate test method listed in Standard Methods for the Examination of Dairy Products, *current* edition—American Public Health Association, Inc., 1740 Broadway, New York, N.Y. 10019, Standard Methods for the Examination of Water and Waste Water, *current* edition—American Public Health Association, Inc., 1790 Broadway, New York, N.Y. 10019, or the methods in the Official Methods of Analysis of the Association of Official Analytical Chemists, *current* edition as published by the Association of Official Analytical Chemists, Box 540, Benjamin Franklin Station, Washington 4, D.C. or any other appropriate tests approved by the department, and the results of *these* tests or analyses *are* admissible as *prima facie* evidence of the facts disclosed, in a court, hearing, or proceeding arising under this act, when identified by the sample numbers and verified by the department representative and analyst handling *them*. *These* tests shall be designated and referred to as "official tests."

Section 19. Section 3-2499, R.C.M. 1947, is amended to read as follows:

"3-2499. **Taking and preservation of samples.** *A person* purchasing or sampling milk or cream for manufacture, sale, or shipment, and paying for the *milk or cream* on the basis of the butterfat, protein, solids, or other compound components contained in the milk or cream as determined by official test, *when* receiving *the* milk or cream *shall* take a sample *of the milk or cream*. All samples taken shall be plainly marked or labeled on



the records of the purchaser or sampler to correspond with the name of the person from whom the purchase was made or sample obtained. *The* record of purchase shall also show the weight of the milk or cream, the results of *the* analysis, the date of sampling, and the amount paid. All milk and cream samples *on* which payment for butterfat, protein, solids, or other components is based shall be kept and suitably preserved by the purchaser for a minimum of fourteen (14) days following testing in the case of milk and for at least two (2) days in the case of cream. *These* samples *are* subject to retest by the department. *This* section *does not* prohibit the weighing or measuring of milk in and sampling of milk from farm bulk milk tanks, or the use of composite or single samples of milk according to rules adopted by the *department*, or *the* test procedures prescribed in this act."

Section 20. Section 3-24-100, R.C.M. 1947, is amended to read as follows:

"3-24-100. **License required for milk or cream route.** It is unlawful for a person to engage in hauling milk or cream *on an* established milk or cream route, for a dairy products manufacturing plant, milk plant, or milk or cream buying or receiving station, without first procuring a license from the department. The fee for *the* license is five dollars (\$5) annually."

Section 21. Section 3-24-101, R.C.M. 1947, is amended to read as follows:

"3-24-101. **License — privilege not a right — expiration — renewal — non-transferability.** All licenses issued *under* this act *are* issued as a matter of privilege, rather than as a matter of right, and only after *proper qualifications* under the rules of the *board*. All licenses issued under *this* act *are* valid, unless sooner suspended or revoked for cause, from the date of issue through December 31 of the year in which issued. All licenses shall be renewed by the first January 31 following the date of license expiration *on* payment of the required fee. All licenses issued under this act shall be posted in conspicuous view at the place of business. Licenses issued under this act *are* not transferable from place to place nor person to person. Penalties of five dollars (\$5) per month or fraction of a month from January 31 of each year may be imposed by the *department* for a failure to apply for a license under this act. Regulatory action may not be taken against a dairyman licensed under this act, until two (2) years following the adoption of *rules* under this act."

Section 22. Section 3-24-102, R.C.M. 1947, is amended to read as follows:

"3-24-102. **Examination and licensing of persons engaged in testing.** (1) A person *may not* operate a butterfat, protein, solids, or other component content test where milk or cream is bought and paid for on the basis of *these* values, without first passing an appropriate examination and obtaining the license required by the department. A person desiring to operate *these* tests shall apply to the department for permission to take the butterfat, protein, solids, or other component content test operator's examination. *The* examination shall be given to the applicant by the

department. *On* passing the examination to the satisfaction of the *department*, the applicant shall be issued a license authorizing him to conduct *these* tests in *this state*. A fee of ten dollars (\$10) shall be paid for each license and for each renewal.

(2) Milk and cream tester's licenses may be revoked, suspended, or denied where testing is not conducted *under* official test procedures, or *under* department rules. *If* the tester regularly or habitually reports results below the actual values of the butterfat, protein, solids, or other compound component values, the licensee *is* subject to the penalties provided in this act. A person who *alters* the results of *an* official test *is* subject to the penalties *provided in* this act."

Section 23. Section 3-24-104, R.C.M. 1947, is amended to read as follows:

"3-24-104. **Grading of milk — condemnation of unsafe milk.** *Milk* or cream purchased for use in milk plants or *for use in a* manufactured dairy product in *this state* shall be graded by licensed graders, weighers, and samplers. *If the* milk or cream is found to be musty, adulterated, rancid, dirty, with marked undesirable odors or flavors, or to contain foreign objects, fragments, substances, or excessive bacteria, *it is* unlawful to sell, purchase, or use *the* milk or cream for a food purpose. The milk or cream grader or *the department shall* condemn *the* milk or cream, and may add to *the* milk or cream a nontoxic coloring substance or rennet and return it to or leave it with the producer with an explanation of the cause for rejection."

Section 24. Section 3-24-105, R.C.M. 1947, is amended to read as follows:

"3-24-105. **Employment of grader, weigher, and sampler — license required — revocation of operator's license.** (1) *Persons* receiving or purchasing milk or cream and persons collecting milk or cream on milk or cream routes shall provide a licensed grader, weigher, and sampler, at each receiving station or for each route.

(2) *It is* unlawful for a person to grade, weigh, or sample milk or cream to be used for processing into grade A milk and cream or used in manufactured dairy products without first procuring a license as a grader, weigher, and sampler from the department and passing *the* examination required by the *department*.

(3) A person who knowingly employs an unlicensed person as a grader, weigher, and sampler, or one whose license has been revoked or suspended, *is* subject to revocation of his own license to operate a manufactured dairy products plant, or cream or milk receiving station or *to* the penalties prescribed in this act."

Section 25. Section 3-24-106, R.C.M. 1947, is amended to read as follows:

"3-24-106. **Renewal, suspension or revocation of license — grounds — hearing — appeal to district court.** (1) *The department may* deny renewal of, suspend, or revoke, a license issued under this act or its rules, for cause or failure to comply with this act or with the rules,

testing procedures, or methods *adopted* under this act, or when the *department* has reason to believe that the licensee's products may be detrimental to or jeopardize the health and welfare of the public.

(2) Before revoking, denying renewal of, or suspending a license, the *department* shall give written notice of *its* intention to revoke, deny, or suspend the license, *and its* reasons therefor. *The department* shall give the licensee a time limit of ten (10) days from *receipt of* the notice during which the licensee may request a hearing to show cause why his license should not be revoked, denied, or suspended. *The* notice shall be sent by certified mail, or personal service may be made *on* the licensee by a representative of the department. Failure of the licensee to request a hearing within the time allowed by the *department is* considered *as* his desire not to contest the *department's* reasons for suspending, denying, or revoking the license.

(3) *If* the licensee does request a hearing, the *department* shall appoint a time and place for an administrative hearing *in* the county where the licensee is licensed.

(4) The date established for the hearing must be not less than ten (10) days nor more than thirty (30) days after receipt of the licensee's request for the hearing. A request for a hearing shall serve as a bar to prosecution until a decision from the *department* becomes final. The licensee at *the* hearing *may* testify or present evidence having a bearing on the denial, suspension, or revocation of his license, and, after hearing all the evidence, the *department* shall make a determination. If a license is suspended, denied, or revoked it *may* not be reinstated until examination or inspection by the *department* shows that the cause for suspension, denial, or revocation has been eliminated or corrected.

(5) *It is* unlawful for *a* licensee to carry on the business or operations for which he was licensed, during the term of suspension or revocation, and if he does so, the licensee *is* subject to the penalties provided in the act.

(6) A licensee who *is* aggrieved by the decision of the *department* in matters pertaining to suspension, denial, or revocation of a license may appeal, within thirty (30) days after the date of determination by the *department* to the district court of the county in which he was licensed, if in the state, or in the case of a business firm of any nature in the state to the county of its principal place of business.

(7) If a license is revoked, a new license must be obtained from the department but a new license may be issued only when the cause for revocation has been corrected."

Section 26. Section 3-24-108, R.C.M. 1947, is amended to read as follows:

**"3-24-108. Names and addresses of producers furnished on request.** The operator of any manufactured dairy products plant or grade A milk plant shall, *on* request of the *department*, furnish the department with the names and addresses of all producers from whom *the* plant obtains milk or cream."

Section 27. Section 3-24-110, R.C.M. 1947, is amended to read as follows:

**"3-24-110. Plans for construction, remodeling or relocating of manufacturing plant.** *Before the construction, extensive remodeling, or relocation of a dairy products manufacturing plant, detailed plans shall be submitted to the department for review and approval before construction, remodeling or relocation begins. The plans must show: size of rooms, type of building material, lighting and electrical system, ventilation, location of water supply, sewage disposal, materials to be used in floors, walls, and ceilings, location and type of floor drains, plumbing, plumbing fixtures, equipment, and the makes, models, and serial numbers of new or used equipment or machinery being added to or replacing existing equipment or machinery. Replacement equipment shall be of the NSF or 3A standard approved types, unless otherwise approved by the department. Construction and materials must conform to rules of the department and of building, electrical, and plumbing codes in effect in the area. Waste water, sewage, and air pollutants shall be disposed by means approved by the department of health and environmental sciences, and evidence shall be submitted that approval has been obtained from the department of health and environmental sciences.*"

Section 28. Section 3-24-111, R.C.M. 1947, is amended to read as follows:

**"3-24-111. Monthly report of plant operator — penalty.** *A person operating a manufactured dairy products plant in this state shall send to the department once a month, not later than the tenth day of the month, a full report of the amounts of butter, cheese, frozen dessert, ice cream, low-fat ice cream, sherbet, water ices, ice milk, freezer-made milk shakes, or other dairy products handled or manufactured during the preceding month, as requested by the department. Any person failing to render the report required by this section or failing to make the report by the date due is guilty of a misdemeanor and subject to the penalties provided in this act.*"

Section 29. Section 3-24-113, R.C.M. 1947, is amended to read as follows:

**"3-24-113. Removal or destruction of products in case of potential health hazards.** *(1) When epidemiological evidence indicates, or the likelihood exists that a dairy or manufactured dairy products plant is producing, manufacturing, storing, handling, or offering for sale, milk or a manufactured dairy product which is adulterated, or which may be detrimental to the health or safety of the consumer, the department may request the department of health and environmental sciences to remove the product from the market or to hold, dispose of, destroy, or treat the product so that it no longer constitutes a potential health hazard.*

*(2) It is unlawful for a person to violate an order which requires the product's removal from the market, or its retention, disposal, destruction, or treatment. Violation is punishable as a misdemeanor, and each violation is subject to a fine of not less than twenty-five dollars (\$25) nor more than two hundred fifty dollars (\$250) or by imprisonment in the county jail for not more than thirty (30) days, or both fine and imprisonment."*

Section 30. Section 3-24-114, R.C.M. 1947, is amended to read as follows:

**"3-24-114. Department's right of entry into dairy or plants for inspection — penalty.** (1) *The department or its authorized agent has the right of entry during normal business hours, including Sundays and holidays, in a dairy supplying milk or cream for manufacturing purposes, manufactured dairy products plant, milk plant, cream receiving station, transportation facility, or any premises where dairy products, dairy manufactured products, or their substitutes or imitations are produced, manufactured, sold, offered for sale, or stored while in transit; to inspect the dairy or plant, its facilities and products, or to obtain samples for testing or analysis. It is unlawful for a person to interfere with the department or its authorized agent in the performance of its duty to enter, inspect, or obtain samples.*

(2) *Violation of this section is a misdemeanor and subjects the offender to a fine of not less than fifty dollars (\$50) and not more than five hundred dollars (\$500) or to imprisonment in the county jail for not less than one (1) nor more than thirty (30) days, or both such fine and imprisonment."*

Section 31. Section 3-24-115, R.C.M. 1947, is amended to read as follows:

**"3-24-115. Co-operative agreements with other agencies.** (1) *The department may enter into co-operative working agreements with state, county, city, and town departments and their political or departmental subdivisions to facilitate the performance of its functions or duties.*

(2) *This section permits the department to establish co-operative working agreements with health departments, sanitarians, or health officers, when special investigations, sampling, or analyses are considered advisable."*

Section 32. Section 3-24-116, R.C.M. 1947, is amended to read as follows:

**"3-24-116. Buyers and plants to make records available to department.** (1) *Persons, including co-operatives, who buy or sell milk or cream on the basis of butterfat, protein, solids, or other component content of milk or cream, shall make available to the department on its request, records showing the amounts of milk or cream sold or purchased, the price per pound, the amount paid, the sampling period for which the amount was paid, and the name and address of the person to whom payment was made or from whom payment was received.*

(2) *A manufactured dairy product plant on request by the department, shall make available production records of dairy manufactured products covered by this act and manufactured products made in semblance or imitation of these dairy products."*

Section 33. Section 3-24-119, R.C.M. 1947, is amended to read as follows:

**"3-24-119. Manufacturer's, wholesaler's or retailer's names to appear on package — use of codes and numbers permitted.** All

manufactured dairy products sold, offered, displayed, or exposed for sale, at wholesale or retail in *this state*, wherever manufactured, must be packaged in a protective wrapper or package and must have the manufacturer's and wholesaler's or retailer's names clearly printed in a conspicuous place on the package or wrapper in which it is sold. *If a manufactured dairy product is packaged in a plant other than that of the plant whose name appears on the package or wrapper, the package or wrapper shall also show the name of the plant at which the product was packaged or wrapped. However, this section does not prevent the use of codes or numbers which designate the packaged or wrapping plant, when these codes or numbers are registered with the department.*"

Section 34. Section 3-24-127, R.C.M. 1947, is amended to read as follows:

**"3-24-127. Pasteurization apparatus and records.** (1) *The department may adopt rules which it considers necessary to assure proper control and use of all equipment used in the process of pasteurization. The department may require the operation of devices and which are needed to accurately record and indicate temperatures to which and the length of time for which the pasteurized product has been heated including those periods and temperatures when the equipment is cleaned and sanitized by C.I.P. method. A person using pasteurizing equipment in this state shall properly record and have available to the department for the preceding two (2) months all records pertaining to the pasteurization of any product. These records shall, at all times, be open to the inspection of the department, the department of health and environmental sciences, and all other state, county, and municipal officers charged with the enforcement of laws and ordinances respecting dairy products or the public health.*

(2) *Pasteurizing equipment which records temperatures or controls the time of holding shall be timed, set, and sealed by the department. The seals may not be removed or broken without first notifying the department.*"

Section 35. Section 3-24-128, R.C.M. 1947, is amended to read as follows:

**"3-24-128. Pasteurization labeling.** *It is unlawful for a person to sell, offer for sale, exchange, or to have in his possession for these purposes milk, cream, or a manufactured dairy product, in a container or package marked, labeled, or in any way designating the contents of the container or package as "pasteurized," unless it has been treated by an approved process of pasteurization, as required by the department.*"

Section 36. Section 3-24-129, R.C.M. 1947, is amended to read as follows:

**"3-24-129. License requirements applicable.** *The licenses required under this act apply only to those licenses issued by the department. This act does not repeal or abrogate the authority of or the issuance of licenses by the department of health and environmental sciences.*"

Section 37. Section 3-24-136, R.C.M. 1947, is amended to read as follows:

**"3-24-136. Labeling on manufactured dairy products to conform to requirements.** Labeling on manufactured dairy products shall conform to requirements of the Food, Drug and Cosmetic Act, and to *the* other requirements *which are* adopted by the department or the department of health and environmental sciences."

Section 38. Section 3-24-137, R.C.M. 1947, is amended to read as follows:

**"3-24-137. Penalties for violations.** (1) A person who *violates* this act, *fails* to comply with the *rules adopted* under this act, or *fails or neglects* to obey a lawful order of the department made *under* this act, is guilty of a misdemeanor.

(2) Unless a specific penalty is provided in *this* act or *rules* for the offense, the offender shall be *fined* not less than twenty-five dollars (\$25) and not more than five hundred dollars (\$500) or *imprisoned* in the county jail for not to exceed six (6) months, or both *fined and imprisoned*."

Section 39. Section 3-2501, R.C.M. 1947, is amended to read as follows:

**"3-2501. Montana quality label.** The *department of livestock* may make use of an outline map of the state of Montana and the word "Montana," printed, lithographed, inscribed, engraved, or otherwise impressed on the labels, tags, seals, or containers of agricultural or food *products*, by a person who has availed himself of the continuous official inspection service offered by the department of *livestock*, as an indication that *the* product has been inspected by the officers, agents, or licensed inspectors of the department and that the products are of *the* quality and description as indicated on *the* label, tag, seal, or container. The outline map with the word "*Montana*," when made use of *under this chapter*, shall be known as the "Montana quality label." *When* an authorized department, agent, or officer of the United States collaborates with the department of *livestock* in the inspection of a product, the Montana quality label may, with the consent of the appropriate department, agency, or officer of the United States, be superimposed on an outline map of the United States on *the* label, tag, seal or container, indicating inspectional collaboration between the *department of livestock* and *the* department, agency, or officer of the United States."

Section 40. Section 3-2502, R.C.M. 1947, is amended to read as follows:

**"3-2502. Limitation on use of label.** The Montana quality label *may* not be used except *under* the rules *made for its use* by the *department of livestock*, and it *may not* be used on the label, tag, seal, container, or product of a farm, factory, mill, or other producing, processing, packing, preparing, or dressing establishment unless *the* product is produced, processed, packed, prepared, or dressed under continuous official inspection."

Section 41. Section 3-2503, R.C.M. 1947, is amended to read as follows:

**"3-2503. Procurement and use of labels — information concerning — disposal of moneys.** The *department of livestock* may make, print,

or otherwise *prepare* a quantity of labels, tags, and seals with the Montana quality label printed, lithographed, inscribed, engraved, or impressed *on them*, sufficient to supply the demand *for them*. *The department of livestock* may furnish labels, tags, and seals at reasonable prices to a producer, processor, packer, or dresser who has availed himself of the continuous official inspection service. *This chapter*, however, *does not* preclude the *department of livestock* from permitting, under *its* rules a producer, processor, packer, or dresser to make, prepare, or cause to be made or prepared, the labels, tags, or seals to be used *on* his own product, or to print, stamp, or otherwise *place* or cause to be placed the Montana quality label *on* products or containers which have been subject to continuous inspection, *if* the labels, tags, seals, stamps or other devices *are* of a design *which* the *department prescribes*. The *department of livestock* may, in *cooperation* with the United States department of agriculture or otherwise, make use of available and appropriate means to disseminate information concerning the Montana quality label and the products which may lawfully bear it, and to popularize *its* use. All moneys derived from furnishing *the* labels, tags, and seals, or from permitting the use of the Montana quality label shall be deposited in the state treasury to the credit of the general fund."

Section 42. Section 3-2504, R.C.M. 1947, is amended to read as follows:

"3-2504. **Wrongful use of label — penalty — injunction — prosecutions.** A person who *uses* the Montana quality label in violation of this *chapter*, or who, with the intent to mislead or deceive, *uses* an imitation, counterfeit, or likeness thereof on the label, tag, seal, container, sign, or otherwise *on* any product which is sold or offered for sale, or who *uses* the Montana quality label or, with intent to mislead or deceive, *uses* an imitation, counterfeit, or likeness thereof *on* or in connection with *an* offer to sell or advertisement for the sale or use of any product which does not in fact lawfully bear the Montana quality label, *is* guilty of a misdemeanor and shall be fined not less than ten (\$10) dollars nor more than five hundred (\$500) dollars. *The word "Montana" may not be used on a brand or label not of No. 1 quality, its equivalent, or better. A district court in this state has jurisdiction to enjoin the use of the Montana quality label or an imitation, counterfeit, or likeness thereof used in violation of this chapter. The department of livestock may cause prosecutions for violations of this chapter, as well as the injunction proceedings under this section, to be instituted through the attorneys for the state or the counties and cities, or otherwise in its discretion.*

Section 43. Section 3-2505, R.C.M. 1947, is amended to read as follows:

"3-2505. **Definitions.** *Unless the context requires otherwise, in this chapter: (1) "Person" includes an individual, partnership, association, union, or corporation.*

(2) "Agricultural and food product" *includes a horticultural, viticultural, dairy, livestock, poultry, bee, other farm or garden product, fish or fishery product, and other foods.*



(3) "Continuous official inspection" means that an employee or a licensed representative of the department of agriculture or *the department of livestock or the United States department of agriculture* regularly and continuously *examines* the commodity as it is being packed so as to have knowledge of the quality that goes into each package."

Section 44. Section 3-2701, R.C.M. 1947, is amended to read as follows:

**"3-2701. Department of livestock to cooperate with department of interior.** The *department of livestock shall cooperate* with the United States department of the interior, fish and wildlife service, in the control and destruction of jack rabbits, prairie dogs, ground squirrels, pocket gophers, rats, mice, and other rodents and related animals in this state that are injurious to agriculture, other industries, and the public health in accordance with organized and systematic plans of the fish and wildlife service covering the control of *these* noxious rodents and related animals. *For this purpose, the department of livestock may enter into written agreements with the fish and wildlife service covering the methods and procedures to be followed in the control and destruction of these* noxious rodents and related animals, the extent of supervision to be exercised by the *department of livestock* and the fish and wildlife service, and the use and expenditure of funds appropriated. *The department of livestock in cooperation with the fish and wildlife service, may enter into cooperative agreements with other governmental agencies, counties, associations, corporations, or individuals when this cooperation is necessary to promote the control and destruction of noxious rodents and related animals.*"

Section 45. Section 3-2702, R.C.M. 1947, is amended to read as follows:

**"3-2702. Expenditures authorized.** The *department of livestock may make expenditures for equipment, materials, supplies, and other expenses, including expenditures for personal services, which are necessary to execute the functions imposed on it by this chapter.*"

Section 46. Section 3-2704, R.C.M. 1947, is amended to read as follows:

**"3-2704. Purchase and sale of rodent control supplies.** In addition to the expenditures authorized in *section 3-2702 the department of livestock may purchase rodent control supplies, including rodent baits, for the use of cooperating governmental agencies, counties, associations, corporations, or individuals in the control of noxious rodents and related animals, and to make these supplies and baits available to the cooperators at approximate cost.*"

Section 47. Section 16-1175, R.C.M. 1947, is amended to read as follows:

**"16-1175. Control of noxious rodents — co-operation.** The boards of county commissioners *shall cooperate* with the *department of livestock* and the United States department of the interior, fish and wildlife service, in the control and destruction of noxious rodents and related animals, such as jackrabbits, prairie dogs, ground squirrels, pocket gophers, rats, mice,

and other rodents and related animals that are injurious to agriculture, other industries, and the public health in accordance with organized and systematic plans of the fish and wildlife service covering the methods and procedures to be followed in the control and destruction of *these* noxious rodents and related animals. *For this purpose the boards of county commissioners shall enter into written agreements with the department of livestock and with the fish and wildlife service, covering the methods and procedure to be followed in the control and destruction of these noxious rodents and related animals, the extent of supervision to be exercised by the board of county commissioners and the fish and wildlife service, and the use and expenditures of funds appropriated. The boards of county commissioners, in cooperation with the department of livestock and the fish and wildlife service, may enter into co-operative agreements with other governmental agencies, counties, associations, corporations, or individuals when cooperation is necessary to promote the control and destruction of noxious rodents and related animals.*"

Section 48. There is a new section to be numbered 46-103.1, R.C.M. 1947, which reads as follows:

46-103.1. **Definitions.** Unless the context requires otherwise, in Title 46:

(1) "Board" means the board of livestock provided for in section 82A-1303;

(2) "Department" means the department of livestock provided for in Title 82A, chapter 13.

Section 49. Section 46-104, R.C.M. 1947, is amended to read as follows:

"46-104. **Duties and powers of department.** *The department shall exercise general supervision over, and, so far as possible, protect the livestock interests of the state from theft and disease, and recommend legislation which, in the judgment of the department, fosters this industry. The department may compel the attendance of witnesses, employ counsel to assist in the prosecution of violations of laws made for the protection of the livestock interests, and assist in the prosecution of persons charged with feloniously branding or stealing livestock, or any other crime under the laws of this state for the protection of stock owners. It may adopt rules governing the recording and use of livestock brands.*"

Section 50. Section 46-105, R.C.M. 1947, is amended to read as follows:

"46-105. **Audit of bills — payment of expenses.** *The department shall audit all bills for expenses incurred by it in the discharge of its duties, which shall be paid out of the department's moneys in the earmarked revenue fund.*"

Section 51. Section 46-202, R.C.M. 1947, is amended to read as follows:

"46-202. **Verification and approval of claims.** All claims against the department of livestock must be verified by oath of the claimant, or his agent with knowledge of the facts."

Section 52. Section 46-203, R.C.M. 1947, is amended to read as follows:

"46-203. **Administrator — appointment and qualifications.** (1) The board shall appoint *a person to be directly responsible to it for the administration of the laws relating to animal health.*

(2) He must *have a doctor of veterinary medicine degree from an accredited college or school* and he must be licensed to practice veterinary medicine in *this state.*"

Section 53. Section 46-204, R.C.M. 1947, is amended to read as follows:

"46-204. **Administrator — duties.** The *administrator*, subject to the rules of the board, *may* act for and perform the duties imposed by law on the board, when the board is not in session, but any order or regulation promulgated by him shall be subject to review, modification, or annulment by the board."

Section 54. Section 46-206, R.C.M. 1947, is amended to read as follows:

"46-206. **Appointment of federal veterinary inspectors.** *With the approval of either the federal veterinarian in charge in this state, or the United States department of agriculture, the department of livestock may appoint federal veterinarians or federal lay inspectors stationed in this state, as deputies or agents for the department. All federal officers so appointed as deputies or agents of the department possess the powers and duties of regular deputies or agents of the department but they shall act without compensation and hold office only at the pleasure of the department.*"

Section 55. Section 46-207, R.C.M. 1947, is amended to read as follows:

"46-207. **Authority of department and agents.** In the performance of *his* official duties, *an* agent or officer of the *department may* enter *on* or *in* a lot, yard, land, building, room, premises, inclosure, car, wagon, boat, or other place or vehicle used for the treatment, storage, manufacture, display, or transportation of animals, meat, or dairy products, intended for sale or disposal as food. *The agent or officer may enter anywhere where there may be found livestock affected with, or which has been exposed to, or which the officer has reason to believe is either affected with, or has been exposed to, an infectious, contagious, communicable, or dangerous disease, or disease-carrying insects.*"

Section 56. Section 46-208, R.C.M. 1947, is amended to read as follows:

"46-208. **Powers of board.** The *department may*:

(1) *Supervise* the sanitary conditions of livestock in this state, under the provisions of the constitution and statutes of this state and *the rules adopted by the department. The department may quarantine* a lot, yard, land, building, room, premises, inclosure, or other place or section in this

state, which is or may be used or occupied by livestock, and which, in the judgment of the *department* is infected or contaminated with an infectious, contagious, communicable, or dangerous disease, or disease-carrying medium by which *the* disease may be communicated. *The department may* quarantine livestock in this state, *when the* livestock is affected with, or has been exposed to disease or disease-carrying medium. *The department may* prescribe treatments and enforce sanitary *rules* which *are* necessary and proper to circumscribe, extirpate, control, or prevent *the* diseases.

(2) *Foster*, promote, and protect the livestock industry in this state by the investigation of diseases and other subjects related to ways and means of prevention, extirpation, and control of diseases, or to the care of livestock and its products; and to this end to establish and maintain a laboratory, and to make, or cause to be made, biologic products, curatives, and preventative agents; and to do or perform *any* other acts and things as may be necessary or proper in the fostering, promotion, or protection of the livestock industry in this state.

(3) *Adopt* rules and orders *which it considers* necessary or proper to prevent the introduction or spreading of infectious, contagious, communicable, or dangerous diseases affecting livestock *in* this state, and to this end *may adopt* rules and orders necessary or proper governing inspections and tests of livestock intended for importation into this state, before it may be imported into this state.

(4) *Adopt* rules and orders *which it considers* necessary or proper for the inspection, testing, and quarantine of all livestock imported into this state.

(5) *Adopt* rules and orders *which it considers* necessary or proper for the supervision, inspection, and control of the standards and sanitary conditions of slaughterhouses, meat depots, meat and meat food products, dairies, milk depots, milk and its by-products, barns, dairy cows, factories, and other places and premises where meat, or meat foods, milk or its products, or any thereof intended for sale or consumption as food are produced, kept, handled, or stored. *For* the purposes of this act *an* authorized representative of *the department*, may take samples of a product so produced, kept, handled, or stored, for analysis or testing by the *department's* chemist, bacteriologist, or the state chemist, and the records of *the* samples and their analysis and test, when identified, as to the sample by the oath of the officer taking *it*, and verified, as to the analysis or test, by the oath of *the* chemist or bacteriologist making *it*, *is* prima-facie evidence of the facts set forth *in it*, when offered in evidence in a prosecution or action at law or in equity for violation of this act, or a rule or order of *the* board *adopted under* this act. *These* standards, in so far as they relate to dairies or milk and its by-products, *may* not include standards of weight or measurement.

(6) *Adopt* rules and orders *which* seem necessary or proper for the supervision and control of manufactured and refined foods for livestock, and the manufacture, importation, sale, and method of using a biologic remedy or curative agent for the treatment of diseases of livestock. *However*, as far as practicable the standards approved by the United States department of agriculture shall be adopted.

(7) *Install* an adequate system of meat inspection at any time and in such places as public welfare may demand under the rules which may provide fees for the maintenance of such inspection, and which shall provide ways and means for shipping home-grown and home-killed meats into any city in *this state*. As far as practicable, *the* rules shall conform with the meat-inspection requirements of the United States bureau of animal industry.

(8) *Slaughter* or cause to be slaughtered, any livestock in this state known to be affected with, or which has been exposed to, an infectious, contagious, communicable, or dangerous disease, when such slaughter is necessary for the protection of other livestock; and destroy, or cause to be destroyed, all barns, stables, sheds, out-buildings, fixtures, furniture, and personal property infected with any such infectious, contagious, communicable, or dangerous disease, when *they* cannot be thoroughly cleaned and disinfected *and the* destruction is necessary to prevent the spreading of *the* disease.

(9) *Indemnify* the owner of any property destroyed by order of *the department* under this act, or any rules or orders *adopted* by *the department* under this act.

(10) *Require* persons, firms, and corporations engaged in the production or handling of meat or meat food products, or dairy products or any thereof, to furnish statistics of the quantity and cost of *the* food and food products produced or handled, and the name and address of persons supplying them any of *the* products."

Section 57. Section 46-209, R.C.M. 1947, is amended to read as follows:

"46-209. **Poultry industry — powers and authority of department.** For the promotion and protection of the poultry industry, and to prevent, control, and exterminate infectious, contagious, dangerous and destructive diseases affecting poultry, *the department* shall:

(1) *Supervise* the sanitary condition of poultry in this state, under the provisions of the constitution and statutes of this state, and *the* rules *adopted* by *the department*. *The department* may quarantine any lot, yard, land, building, room, premises, inclosure, or other place or section in this state, which is or may be used or occupied by poultry, and which, in the judgment of *the department* is infected or contaminated with an infectious, contagious, communicable, or dangerous disease, or disease-carrying medium by which *the* disease may be communicated. *The department* may quarantine any poultry in this state, *when* the poultry is affected with, or has been exposed to, disease or disease-carrying medium. *The department* may prescribe treatments and enforce sanitary *rules* which *are* necessary and proper to circumscribe, extirpate, control or prevent *the* diseases.

(2) *Foster*, promote and protect the poultry industry in this state by the investigation of diseases and other subjects related to ways and means of preventing, controlling, and exterminating diseases of poultry; *adopt* and enforce rules for the prevention and extermination of such diseases, and perform *all* other acts and things as may be necessary or proper in the fostering, promotion, or protection of the poultry industry in this state.

(3) *Adopt* and enforce rules and orders necessary or proper to prevent the introduction or spreading of infectious, contagious, communicable or dangerous diseases affecting poultry *in* this state, and to this end *adopt* and enforce rules and orders necessary or proper governing inspections and tests of all poultry intended for importation into this state, before it may be imported into this state.

(4) *Adopt* and enforce rules and orders necessary or proper for the inspection, testing, and quarantine of all poultry imported into this state."

Section 58. There is a new section to be numbered 46-209.1, R.C.M. 1947, which reads as follows:

46-209.1. **Administrator's expertise to be considered.** In any action taken by the board in section 46-208 and 46-209 the board shall ask for and consider the expertise and judgment of the administrator of the laws relating to animal health.

Section 59. Section 46-211, R.C.M. 1947, is amended to read as follows:

"46-211. **Adoption of rules.** *The department shall adopt* and enforce rules for the inspection and tuberculin test of dairy cattle, or other animals, and for the inspection, test, treatment, or disposition of livestock affected with, or which may have been exposed to, infectious, contagious, communicable, or dangerous disease, and for the quarantines provided for in this act."

Section 60. Section 46-213, R.C.M. 1947, is amended to read as follows:

"46-213. **Duty of county assessor.** The assessment roll of the county in which the disease control area is to be established *is* the basis for computing the required percentage of livestock owners and livestock. *The* county assessor shall certify to the *department*, when the necessary seventy-five per cent (75%) of the owners of livestock representing not less than fifty per cent (50%) of the species of livestock to be inspected, tested, treated, or vaccinated have signed the required petition."

Section 61. Section 46-214, R.C.M. 1947, is amended to read as follows:

"46-214. **Owner guilty of misdemeanor, when.** A person in a disease control area who does not gather his livestock after being notified by the *department* or its agent, to have *the* livestock available or *who* refuses to have *the* livestock inspected, tested, treated, or vaccinated or violates this act, *is* guilty of a misdemeanor."

Section 62. Section 46-216, R.C.M. 1947, is amended to read as follows:

"46-216. **Sale of carcasses unsanitarily slaughtered or handled.** It *is* unlawful for *a* person, firm, or corporation to sell as food for human beings, or to possess as human food intended for sale, the carcass or part of carcass of *an* animal slaughtered under unsanitary conditions, or which carcass or part of carcass has been prepared, handled, or kept under

unsanitary conditions. *The department shall see that this section is enforced.*"

Section 63. Section 46-217, R.C.M. 1947, is amended to read as follows:

"46-217. **Authority of municipal corporations.** *This act does not prevent the governing authority of a municipal corporation from enacting or enforcing ordinances for the inspection of slaughterhouses, meat depots, meat markets, meat food products, creameries, butter or cheese factories, dairies, and dairy products, sold or offered for sale in the limits of the municipal corporation. An ordinance may not be enforced in conflict with the powers of this act delegated to the department, its officers, or agents.*"

Section 64. Section 46-218, R.C.M. 1947, is amended to read as follows:

"46-218. **Classification of animals as to compensation for slaughter.** *Animals, slaughtered under the direction of the department by order of the board, under this act, are divided into two classes for the purposes of compensation:*

(1) Animals determined by the *department* to be affected with an incurable disease, which are destroyed by order of *the board*, are designated as animals of class 1 and unless otherwise provided each of the animals shall be paid for on the basis of seventy-five per cent (75%) of its appraised value. The county in which *the* animal was owned at the time it was determined to be affected with an incurable disease, *is* liable in part, as *later* provided, for an indemnity to be paid for *the* animal. *The ownership and county are determined by an affidavit of the owner of the animal or his agent.* Each animal directed to be destroyed shall be appraised by a representative or an authorized agent of the *department* with the owner agreeing in writing as to the value of *the* animal. When appraised, due consideration shall be given to its breeding value as well as its dairy or meat value and the condition of the animal as to the disease and the present and probable effect of the disease on the animal. In the absence of *an* agreement, there shall be appointed three (3) competent, disinterested parties, one appointed by the *department*, one by the owner, and a third by the first two, to appraise each animal, taking into consideration its breeding value as well as its dairy or meat value and the condition of the animal as to the disease and the present probable effect of the disease on the animal. The judgment of the majority *is* the judgment of *the* appraisers and *is* binding on both parties as the final determination of indemnity to be paid for each animal. *The* total compensation of each *group* of appraisers *is* limited to five dollars (\$5) for *the* group appraisal, one-half (½) of which shall be paid by the *department*. *The* total amount of indemnity paid by the state and a county for *an* animal *may* not exceed the actual sound value of an animal of its class, and the total combined amount of indemnity paid for *the* animal by the state and a county *may* not exceed the sum of one hundred dollars (\$100) for a registered purebred animal or the sum of fifty dollars (\$50) for a grade animal. Animals presented for appraisal as purebreds shall be accompanied by their registration papers at the time of appraisal or they shall be appraised as grades. *If* purebreds are less than three (3) years old and not registered, the

*department* may grant a reasonable time for their registration and presentation of their registration papers to the appraiser. Registration papers shall accompany the claim for indemnity.

(2) Animals of class 1 shall be paid for on the basis of their full appraised value as determined in *this section* if no evidence of incurable disease is disclosed by autopsy, bacteriologic, serologic, microscopic, or other findings. *The* total combined amount of indemnity paid by the state and a county for *an* animal *may* not exceed the actual sound value of an animal of its class. *The* total combined amount of indemnity paid by the state and a county for *the* animal *may* not exceed one hundred dollars (\$100) for a registered purebred animal or fifty dollars (\$50) for a grade animal.

(3) Animals *which* are determined by the *department* to be affected with or exposed to foot-and-mouth disease, rinderpest, contagious pleura pneumonia, surra, other infectious-contagious, communicable, or dangerous disease, which is not of its nature necessarily fatal, *and* are destroyed by order of *the department* as a sanitary safeguard, *are* designated as animals of class 2 and each animal shall be paid for on the basis of its full appraised value. *The* appraised value shall be determined in the manner set out in subsection (1) of *this section*. *The appraisal of the* animals shall be based on the meat, dairy, or breeding value of *the* animal, but where *appraisal* is based on breeding value of *the* animal, no *appraisal may* exceed three (3) times its meat or dairy value. The total amount of indemnity paid by the state for *an* animal *may* not exceed the actual sound value of an animal in its class; and no indemnity for a class 2 animal *may* be paid by a county. In the case of destruction of an animal afflicted with brucellosis (Bang's disease), no indemnity shall be paid *for the animal*, unless the board, in its discretion, *determines* the best interests of *this* state will be served by payment of an indemnity. *In this* event, the board shall set out standards of indemnity by rules, and *may not* pay in excess of one hundred dollars (\$100) for a registered purebred animal, or fifty dollars (\$50) for a grade animal. In all cases where the federal government, or agency other than the state, *compensates* the owner in whole or in part for livestock destroyed as a sanitary safeguard, the amount of compensation from the state shall be determined *under* section 46-229.

(4) Animals *which* are injured or killed while they are being inspected or tested *under* an order of the *department* or its agent, and *if the* animals do not come within either class 1 or class 2 may be paid for at their full appraised value, *if* the claim *for the animal* is recommended for payment at a meeting of the *department*. *Where* it is shown that the injury or death of *the* animal was not proximately due to the negligence of the owner or his agent the whole claim, when approved, shall be paid out of *department* funds. *The* limit of indemnity for *an* animal paid *for* by the state *may* not exceed that fixed by this act for animals of class 2."

Section 65. Section 46-219, R.C.M. 1947, is amended to read as follows:

"46-219. **Payment for other personal property.** Personal property other than livestock destroyed by order of the *department* shall be paid



for on the basis of its appraised value. *The appraised value is determined in the manner specified in section 46-218 for the determination of the appraised value of animals.*"

Section 66. Section 46-220, R.C.M. 1947, is amended to read as follows:

"46-220. **Indemnity — from what funds paid.** In payment for animals or property destroyed by order of the *department*, the state shall pay one-half ( $\frac{1}{2}$ ) of *the* indemnity out of *the money* at the disposal of the *department*. *The* county liable in part for the indemnity, as determined by this act, shall pay one-half ( $\frac{1}{2}$ ) of *the* total indemnity out of the general fund of the county."

Section 67. Section 46-221, R.C.M. 1947, is amended to read as follows:

"46-221. **Presentation of claims for indemnity.** Claims against the state and county *which arise* from the destruction of animals or property destroyed by order of the *department* shall be made *on* forms provided by the *department*. *They* must contain an affidavit by the owner or his agent with knowledge of *the* animal or property certifying to the ownership of *the* animal or property, the county in which they are owned, and that *the* animal or *property has* been destroyed, *under* the law and the *rules* of the *department*. *These* claims must be accompanied by a certificate from the *department* that *the* animal or property *was* ordered destroyed. *The* claims shall *also* be accompanied by a certificate of appraisal as appraisal is determined under section 46-218, together with an account of sale showing the net proceeds from the sale of the animal, if any, paid to the owner of the animal."

Section 68. Section 46-222, R.C.M. 1947, is amended to read as follows:

"46-222. **Indemnity for class 2 animals in state less than one hundred and twenty (120) days.** Indemnity for animals of class 2, when *the* animals have not been *in this* state for at least one hundred and twenty (120) days and *the* payment is authorized by the *department under* section 46-228 (5), shall be paid out of *department* funds."

Section 69. Section 46-224, R.C.M. 1947, is amended to read as follows:

"46-224. **Examination and payment of claims.** Claims against the state arising under this act, if found correct, shall be processed and paid from funds of the *department*."

Section 70. Section 46-226, R.C.M. 1947, is amended to read as follows:

"46-226. **Sale of condemned carcasses — disposal of proceeds.** Where *the* carcass of *an animal* ordered destroyed *under* this act *is* found, *on* official post-mortem inspection, to be fit for human consumption, the owner shall receive the net proceeds from the sale of *the* carcass. *The* proceeds shall be deducted from his claim against the state and county *for the* slaughter. A representative of the *department*, may, when considered

advisable or necessary or when it is desired by the owner, sell the carcass *on terms he considers to be in the best interests of this state*, and the net proceeds obtained *from the sale* shall be paid to the owner. *This procedure does not invalidate the owner's claim for indemnity for any balance due him.*"

Section 71. Section 46-227, R.C.M. 1947, is amended to read as follows:

"46-227. **Rules — agreement with federal government.** *When the department determines that it is necessary to eradicate or control an infectious, contagious, communicable, or dangerous disease of livestock in this state, in co-operation with the United States department of agriculture or other federal agency and to appraise and destroy animals affected with, or which have been exposed to a disease, or to destroy property in order to remove the infection and complete the cleaning and disinfection of the premises, or to do any act or incur any other expense reasonably necessary in suppressing this disease, the board may accept and adopt on behalf of the state, the rules adopted by the United States department of agriculture or other federal agency under authority of an act of Congress, or the portion considered necessary, suitable, or applicable. The department may adopt other rules necessary or desirable for this purpose, and cooperate with the United States department of agriculture or other federal agency in the enforcement of the rules accepted and adopted.*"

Section 72. Section 46-228, R.C.M. 1947, is amended to read as follows:

"46-228. **Persons entitled to indemnity.** The owner of *an animal or property destroyed under this act*, is entitled to indemnity, except in the following cases:

- (1) Animals belonging to the United States.
- (2) Animals brought into *this state which violate this act, or rules of the department.*
- (3) Animals which the owner or claimant knew to be diseased, or had notice *of the disease* at the time they came into his possession.
- (4) Animals which had the disease for which they were slaughtered, or which were destroyed *because of exposure to the disease*, at the time of their arrival in *this state. However, an animal of the second class shipped into this state under department rules and accompanied by the proper certificate of health from a recognized state or federal veterinarian may be paid for when payment is authorized by the department.*
- (5) Animals which have not been *in this state* for at least one hundred and twenty (120) days *before the discovery of the disease; however, animals of the second class which have not been in the state one hundred and twenty (120) days may be paid for when payment is authorized by the department.*
- (6) When the owner or agent has not used reasonable diligence to prevent disease or exposure *to disease.*

(7) When the owner or agent has not complied with the rules of the *department* with respect to animals condemned.

(8) No compensation or indemnity will be paid for the destruction of livestock affected with tuberculosis, or other infectious, contagious, communicable, or dangerous disease, unless the entire herd or band of affected livestock is under the supervision of the *department* for the eradication of *the* disease.

(9) When animals condemned are not destroyed within sixty (60) days after they *are* determined to be affected with or exposed to a disease which requires them to be destroyed by order of the *department*."

Section 73. Section 46-229, R.C.M. 1947, is amended to read as follows:

**"46-229. Compensation from federal government or other agency.** *If the federal government, or an agency other than the state or county, compensates the owner for livestock or property destroyed by order of the department the amount of the compensation from the federal government, or other agency, shall be deducted from the owner's claim, as filed against the state and county, that is, from the balance that remains after the net salvage price received from the sale or other disposal of the condemned animal has been deducted from the appraised value. If the owner or agent of the livestock or property destroyed by order of the department forfeits an indemnity, which the owner would otherwise be entitled to from the federal government, or compensating agency other than the state or county, by violation of the rules of the federal government, or other agency; an amount equal to the indemnity which would have been paid by the federal government, or other indemnifying agency, but for the forfeiture, shall also be deducted from the owner's claim; that is, the balance that remains after the net salvage price received from the sale or other disposal of the condemned animal has been deducted from the appraised value.*"

Section 74. Section 46-230, R.C.M. 1947, is amended to read as follows:

**"46-230. Expenses, how paid — lien and foreclosure.** The expense of inspecting, testing, supervision of quarantine, supervision of dipping, supervision of disinfection, and supervision of other treatment of livestock by the *department*, under this act, and the sanitary inspection of dairies, packing houses, meat depots, slaughterhouses, milk depots, and other premises *under* this act, shall be paid for by the *department*. However, the owner of the livestock or property is liable for all expenses, *except* the salary of the supervising officer, representing the *department*, when the owner, agent, or person in charge of the livestock or property has violated the *rules of the department*. These expenses are a lien on the livestock or other property, and the *department* may retain possession of the livestock until the charges and expenses are paid. The lien is not dependent on possession, and the lien may be foreclosed in the name of the agent of the *department* by sale of the stock, or as many as may be necessary to pay the sum of the costs, by sale at public auction, and ten (10) days' notice by posting in three (3) public places in the county. The lien may

also be foreclosed by an action in a court of competent jurisdiction against the owner of the livestock to recover the amount of charges and expenses."

Section 75. Section 46-231, R.C.M. 1947, is amended to read as follows:

"46-231. **Expense of cleaning and disinfecting carriers' facilities.** The expense of cleaning and *disinfecting* cars, yards, or other transportation facilities of a common carrier, when required by the *department*, is a charge against *the* common carrier. *Also*, the expense of supervising the cleaning and *disinfecting of* cars for transportation of livestock, when required at a point other than disinfection points agreed on between the *department* and the carrier, is a charge against *the* common carrier."

Section 76. Section 46-232, R.C.M. 1947, is amended to read as follows:

"46-232. **Licensing of milk plants and dairies selling milk or cream for public consumption.** (1) It is unlawful for the following businesses to operate in *this* state without first obtaining a license from the department of livestock:

(a) A dairy selling milk or cream for public consumption in the form in which it is originally produced.

(b) Condensed, evaporated, or powdered milk plant.

(c) Fluid milk plant. A milk plant is a place where milk or cream is purchased or collected and prepared for distribution to the consumer in liquid form but is not produced at *this* place.

(2) A license expires on December 31 of the year issued. The department may, following the procedures in the Montana Administrative Procedure Act [82-4201 to 82-4225], deny, suspend, or revoke a license when it determines that a person to whom the license is issued has failed to comply with the rules of the department or has failed to conduct his establishment in a sanitary manner. All license fees collected shall be deposited into the general fund.

(3) The department *may* issue a restraining order prohibiting a dairy from selling or giving away milk or cream not produced or handled *under* the laws of *this state*, or the *rules* of the department. It is unlawful for a dairy, while restrained, to sell or give away for public consumption milk or cream produced or handled by the dairy and it is *also* unlawful for a dairy products manufacturing plant, milk plant, or cream station to purchase or use the cream or milk from a dairy while the dairy is restrained.

(4) The following license fees are charged for licenses issued under this section:

(a) Condensed, evaporated, or powdered milk factory, fifty dollars (\$50).

(b) Fluid milk plant, fifty dollars (\$50).

(c) Dairy, five dollars (\$5).

(5) A person violating this act is guilty of a misdemeanor."

Section 77. Section 46-233, R.C.M. 1947, is amended to read as follows:

**"46-233. Exceptions of certain producers of meats and dairy products.** *The owners or operators of slaughterhouses, packing houses, meat depots, dairies, creameries, butter factories, cheese factories, or other places of business engaged in the production, storage, or transportation of meats, meat foods, or dairy products, are not required to procure a license from the department of health and environmental sciences, in so far as the business of production, storage or transportation of these food products are concerned. This act does not limit the supervision or regulation of the sanitary condition of a restaurant, hotel, boardinghouse, or retail market, or the products sold or offered for sale thereat, by the department of health and environmental sciences, nor does this act limit the duties imposed by law on the department of health and environmental sciences to make sanitary rules for the eradication or control of an epidemic of human disease which may exist in a community.*"

Section 78. Section 46-234, R.C.M. 1947, is amended to read as follows:

**"46-234. Co-operation by public officers.** *The state and local boards of health of a county, city, town, or village shall cooperate with and assist the department in matters which relate to the execution of its sanitary powers regarding livestock and their food products under this act, in the manner which the department prescribes, either by general rule or direct order.*"

Section 79. Section 46-235, R.C.M. 1947, is amended to read as follows:

**"46-235. Slaughterhouse license — fees and renewals.** *It is unlawful for a person, firm, or corporation to maintain or conduct a slaughterhouse, meat packing house, or meat depot in this state without having a license issued by the department. The annual fee for licenses issued under this section is one dollar (\$1) and shall be paid into the general fund. All licenses expire on December 31, of the year in which they are issued, and shall be renewed by the department on request of the licensee. However, when the department finds that the place for which the license is issued is not conducted in accordance with the rules and orders of the board, made under this act, then the department shall revoke the license and may not renew it until the place is in a sanitary condition in accordance with department rules.*"

Section 80. Section 46-236, R.C.M. 1947, is amended to read as follows:

**"46-236. Duty to report contagious diseases.** *A person, including the owner or custodian, who has reason to suspect the existence of a dangerous, infectious, contagious, or communicable disease in livestock, or the presence of exposed animals to the disease, in this state shall immediately give notice to the department.*"

Section 81. Section 46-239, R.C.M. 1947, is amended to read as follows:

"46-239. **Same — civil liability.** A person, firm, or corporation *who violates* this act or *rules* or orders of the *department* is liable for damages sustained by a person *because of the violation*. The damages may be recovered by *the person* in a civil action in a court of competent jurisdiction."

Section 82. Section 46-240, R.C.M. 1947, is amended to read as follows:

"46-240. **Power of department concerning oaths and witnesses.** When in the exercise of *its* powers or the discharge of *its* duties, it *becomes* necessary for an *employee* of the *department* to investigate facts and conditions, they *may* administer oaths, take affidavits, and compel the attendance and testimony of witnesses."

Section 83. Section 46-243, R.C.M. 1947, is amended to read as follows:

"46-243. **Personal liability — members and officers of department.** No member of the *department* is personally liable for damage resulting from his official acts or decisions *under* this act, or a rule, or order *adopted* under this act, *unless* it *is* for his own willful wrong or gross negligence."

Section 84. Section 46-301, R.C.M. 1947, is amended to read as follows:

"46-301. **Tuberculin — permission for sale or distribution of.** A person, firm, or corporation desiring to sell or distribute tuberculin for animal use in *this* state must first secure permission from the *department of livestock*."

Section 85. Section 46-302, R.C.M. 1947, is amended to read as follows:

"46-302. **Same — report of sales or distribution.** A person, firm, or corporation, *who has* secured permission from the *department* to sell or distribute tuberculin for animal use *in this* state shall, on the same day *he sells, furnishes, or supplies* tuberculin, report in writing to the *department* the name and address of the person *and* a statement of the amount of tuberculin supplied *to him*."

Section 86. Section 46-501, R.C.M. 1947, is amended to read as follows:

"46-501. **Butcher and meat peddler defined.** A person, firm, corporation, or association who slaughters neat cattle for the purpose of selling or distributing the meat or by-products of *the* cattle in *this* state, and who maintains slaughterhouses for this purpose, and a person, firm, corporation, or association who maintains a meat market or meat markets for the purpose of selling or distributing any of the meat or by-products of *the* cattle in *this* state, and who, in either case, complies with the rules of the *department of livestock* and the board of health *and environmental sciences*, and with the city or town health ordinances where *the* business is operated, or any other ordinance pertaining to meat dealers, *is*, for the purpose of this act, designated a "butcher." A person, firm, corporation, or association who slaughters neat cattle or buys and sells any dress beef

or veal, and who does not maintain a licensed slaughterhouse or market, is, for the purpose of this act, designated a "meat peddler."

Section 87. Section 46-503, R.C.M. 1947, is amended to read as follows:

"46-503. **Inspection and marking of hides of slaughtered cattle — records — bill of sale to be presented, when — license or inspection not necessary, when.** (1) All persons shall have the hide in its entirety with tail and ears attached, of each beef or veal inspected by a sheriff or his deputy in the county where the animal was slaughtered. The sheriff or his deputy shall mark *the* hide in *the* manner *which the department requires* by rule. The sheriff *shall* make the inspection required by this act. Each of the four quarters presented shall be stamped with an ink stamp; *the* stamp shall be provided by the county and the form specified by the *department* however, *the* stamp need not be affixed if the meat has been inspected and stamped by an inspector of the *department*. The sheriff or deputy shall keep a record and issue a certificate of inspection, on a form provided by the county; *the* form shall be specified by the *department*, giving the butcher's, peddler's, or person's name, the place of business, the serial number of the inspection of the hide, the brand on the hide, the date of inspection, and the place where *the* inspection was made. The officer *who makes the* inspection shall forward a copy of *the* inspection certificates to the *department*, and to the county clerk of the county in which *the* inspection was made, on or before the first day of each month. *The* inspection certificates shall be placed on file in *these* offices.

(2) When ownership of the carcass and hide presented is claimed on a bill of sale, the officer making the inspection shall demand and receive the original bill of sale, which shall be attached to the inspector's certificate sent to the county clerk and recorder. When *the* bills of sale cover cattle not included in the inspection, the inspector shall issue to the owner of the bill of sale a receipt for *the* bill of sale. *The* receipt shall describe the balance of the cattle covered by the original bill of sale.

(3) *Instead* of the inspection provided for above, the *department* may in its discretion designate a person to make a live inspection of all meat cattle at any licensed slaughterhouse and to issue a certificate of inspection. The *inspector* shall *inspect* and mark the hide and identify the meat in *the* manner *which the department prescribes* by rule. The marking of the hide *is* sufficient compliance with section 46-508.

(4) In case of an emergency or custom slaughter involving not more than two (2) cattle a licensed slaughterhouse may slaughter without a live inspection *if* the hide from *the* cattle *is* held separate from other hides until inspected and cleared by the inspector in charge."

Section 88. Section 46-506, R.C.M. 1947, is amended to read as follows:

"46-506. **Proviso.** *This act does not prevent an inspector appointed by the department from making an inspection.*"

Section 89. Section 46-601, R.C.M. 1947, is amended to read as follows:

"46-601. **Recorder of marks and brands.** *The department of livestock is the general recorder of marks and brands.*"

Section 90. Section 46-603, R.C.M. 1947, is amended to read as follows:

"46-603. **Recording of brands required.** *It is unlawful for a person, firm, or corporation to artificially brand, mark, or cause to be artificially branded or marked, any domestic animal or livestock, running at large, on the public domain, or open range, or which may run or stray at large or on the public domain or open range, unless the artificial brand or mark has been recorded or re-recorded with the department, in the name of the person, firm, or corporation, within the period of ten (10) years immediately preceding the branding or marking.*"

Section 91. Section 46-604, R.C.M. 1947, is amended to read as follows:

"46-604. **Application for recording — record of brands.** *A person, firm, or corporation desiring to have recorded an artificial mark or brand for use in distinguishing or identifying the ownership of any domestic animal or livestock, shall make application for the mark or brand to the department. The application must be in writing, and must contain the name, residence, and post-office address of the applicant, and the species of the animals on which the mark or brand is to be used. The department shall designate for the applicant's use some practical form of mark or brand, distinguishable with reasonable certainty from all other marks and brands recorded, or re-recorded, within the period of ten (10) years immediately preceding the time of filing the application, in the name of some person, firm, or corporation other than the applicant. The department shall designate the position on the animals on which the mark or brand shall be placed, and the species of animals on which the mark or brand may be used. The department shall keep a record in a book kept by it for that purpose, of the particular mark or brand, the position on the animal where the mark or brand is to be used, the species of animals on which the mark or brand is to be used, and the date of recording. The record is a public record and is prima-facie evidence of the facts recorded in it.*"

Section 92. Section 46-605, R.C.M. 1947, is amended to read as follows:

"46-605. **Designation of years for re-recording brands.** *Each tenth year after 1921 is the year for re-recording artificial marks and brands used to distinguish and identify the ownership of domestic animals and livestock. The department shall, on the application of a person, firm, or corporation, or the transferee of the person, firm, or corporation, made in a year which is a year for re-recording marks and brands, to re-record a mark or brand which at the time of the application stands of record in the department in the name of the person, firm, or corporation. A mark or brand which was not originally recorded or re-recorded in the name of the person, firm, or corporation, during the re-recording year last preceding the date when the application is filed, or originally recorded in the name of the person, firm, or corporation, or his or its predecessor or prede-*



cessors in interest between the time of *the* application and the re-recording year last preceding *the* application, *is not* of record in the *department*."

Section 93. Section 46-606, R.C.M. 1947, is amended to read as follows:

"46-606. **Right of owner of recorded brand.** A person, firm, or corporation in whose name a mark or brand is *recorded*, is entitled to the exclusive use of *the* mark or brand on the species of animal and in the position designated in *the* record. A copy of *the* record certified by the *department* is prima-facie evidence of *this* right; and *the* certificate is *also* prima-facie evidence that the person, firm, or corporation entitled to use *the* mark or brand is the owner of all animals on which *it* appears in the position and on the species of animal stated in *the* certificate."

Section 94. Section 46-607, R.C.M. 1947, is amended to read as follows:

"46-607. **Publication of notice of re-recording brands.** Between the *period beginning January 1 and ending June 30* in each re-recording year, the *department* shall *publish* in at least one (1) issue of at least one (1) newspaper of general circulation in each county of this state, *in which* a newspaper is published, a notice to the effect that *the* year is a year for re-recording marks and brands, and that no mark or brand *continues* of record unless re-recorded. *The department* shall *also* mail to each person, firm, and corporation in whose name a mark or brand stands of record, a similar notice addressed to *the* person, firm, or corporation at his or its post-office address as shown by the records in *the department*."

Section 95. Section 46-609, R.C.M. 1947, is amended to read as follows:

"46-609. **Fees for department.** The *department* shall charge and collect *ten dollars (\$10)* for recording a new mark or brand, for recording a mark or brand transfer, or for re-recording a mark and brand. *The department shall charge one dollar (\$1)* for a certified copy of a record and a duplicate certificate. All fees collected shall be paid into the earmarked revenue fund for the use of the *department*. However, not more than ten per cent (10%) of the net re-recording fees after all expenses of re-recording are paid, shall be expended in any one (1) year except in case of an emergency declared by the governor."

Section 96. Section 46-701, R.C.M. 1947, is amended to read as follows:

"46-701. **Appointment and powers.** The *department of livestock* may appoint stock inspectors and detectives necessary for the protection of the livestock interests of *this* state. *The* inspectors and detectives shall take the official oath required by law and shall have *similar* powers and authority *to those* conferred by law on deputy sheriffs. However, they are not entitled to the fees or emoluments awarded by law to deputy sheriffs."

Section 97. Section 46-703, R.C.M. 1947, is amended to read as follows:

"46-703. **Duties.** *The* stock inspectors and detectives *shall* arrest all

persons who in their presence violate the stock laws of *this state*. *Every* stock inspector and detective, *on* information that *a* person has committed *an* offense against the laws of *this state*, in feloniously branding or stealing stock, or *an* offense against the laws of *this state* for the protection of the rights and interests of stock owners, must make the necessary affidavit for the arrest and examination of *the person*, and *on a* warrant issued *for the person*, immediately arrest *the person* and bring him before the proper officer and notify the *department* of his acts."

Section 98. Section 46-704, R.C.M. 1947, is amended to read as follows:

"46-704. **Compensation.** The stock inspectors and detectives are under the exclusive control and direction of the *department*. They must be paid for their services *in the amount which the department determines*."

Section 99. Section 46-705, R.C.M. 1947, is amended to read as follows:

"46-705. **District officers, detectives and inspectors.** The stock inspectors and detectives are district officers, and the *department* must designate the district in which the inspectors and detectives serve, and the district must be designated in their commissions."

Section 100. Section 46-707, R.C.M. 1947, is amended to read as follows:

"46-707. **Compensation for animals killed.** The value of the animal taken and killed shall be determined by three disinterested parties living in the vicinity where the animal is seized. *The amount of money awarded* to the owner *is* full compensation *for* the loss of *the* animal. All money disbursed *under this section* shall be paid out of the *department's funds* in the earmarked revenue fund, and whenever possible the dead bodies of the animals killed shall be disposed of for cash, and the proceeds turned into *the fund*."

Section 101. Section 46-709, R.C.M. 1947, is amended to read as follows:

"46-709. **Commissioners must designate places for loading livestock for inspection, when.** The board of county commissioners must, at the request of the *department*, designate within their respective counties certain convenient places, and provide suitable facilities for unloading and loading of livestock for inspection purposes."

Section 102. Section 46-801, R.C.M. 1947, is renumbered section 46-801.2, and is amended to read as follows:

"46-801.2. **Inspection of livestock before change of ownership or removal from county—transportation permits.** (1) Except as *otherwise provided* in this act, it *is* unlawful to remove or cause to be removed from *a* county in this state any *livestock*, or to transfer ownership by sale or otherwise or for an intended purchaser or his agent to take possession of any such animal subject to title passing upon meeting or satisfaction of any conditions unless *the livestock has* been inspected for brands by a state stock inspector or deputy state stock inspector, and a certificate

of *the* inspection *has* been issued in connection with and for the purpose of *the* transportation or removal or of such change of ownership as provided *in this act*. *The* inspection must be made in daylight provided, however, that the change of ownership inspection requirements of this subsection shall not apply when such sale or change of ownership transaction involves five (5) or less such animals.

(2) It *is* unlawful to sell or offer for sale at a livestock market any *livestock* originating within any county in *this* state in which a livestock market is maintained, or transported under a market consignment permit until *the livestock* has been inspected for marks and brands by a state stock inspector, as provided *in this act*.

(3) It *is* unlawful to remove or cause to be removed any *livestock* from the premises of a livestock market in this state unless *the livestock* has been inspected for marks and brands by a state stock inspector and an inspection certificate for *the livestock* has been issued in connection with and for the purpose of *the* removal from the premises of *the* livestock market, as provided *in this act*.

(4) The person in charge of *livestock* being removed from a county in this state, where inspection thereof is required by this act, or where change of ownership has occurred or when moved under a market consignment permit shall have in his possession the certificate of inspection or market consignment permit issued in connection therewith, and shall exhibit the *certificate* to any sheriff, deputy sheriff, constable, highway patrolman, state stock inspector or deputy state stock inspector at the request of either of them. *Section 46-803* shall be extended to livestock transported or sold under the above-mentioned permits.

(5) The following transportation permits may be issued:

(a) *If a saddle, work, or show horse is being transported from county to county in this state by the owner for his personal use or business, or where a purebred cow is being transported from county to county in this state by its owner for show purposes*, and where there is no change of ownership, the inspection certificate as required by this act, may be endorsed as to *the* purpose and extent of transportation by the inspector issuing *the certificate* in order to serve as a travel permit *in this state* for a period not to exceed one (1) year for the horse or cow described thereon. *The* permit becomes void upon any transfer of ownership or if *the* horse or cow are to be removed from the state. In such instances an inspection must be secured for removal and the endorsed certificate surrendered.

(b) The owner of a saddle, work, or show horse may apply for a permanent transportation permit valid for both interstate and intrastate transportation of *the* horse until there is a change of ownership. To obtain a permit a horse must have either a registered brand that has been legally cleared, or a lip tattoo, or the owner must present proof of ownership to a state stock inspector. A written application, on forms to be provided by the department, must be completed by the owner and presented to a state stock inspector together with a five dollar (\$5) permit fee for each horse. The application shall contain a thorough physical description of *the* horse and list all brands and tattoos carried by *the* horse.

Upon approval of *the* application by a state stock inspector, a permanent transportation permit shall be issued by the department to the owner for each horse and such permit shall be valid for the life of the horse. *If* there is a change of ownership in *a horse* the permit shall automatically become void. The permit must accompany the horse for which it was issued at all times while *the* horse is in transit. *This* permit shall be in lieu of other permits and certificates required under the provisions of this section. The state of Montana shall recognize as valid permanent transportation permits issued in other jurisdictions to the owner of *a* saddle, work, or show horse subsequently entering the state. *Such* a permit shall be automatically void upon a change of ownership."

Section 103. There is a new section to be numbered 46-801.1, R.C.M. 1947, which reads as follows:

46-801.1. Unless the context requires otherwise, in sections 46-801.2 through 46-806:

(1) "Livestock" means a cow, ox, bull, stag, calf, steer, heifer, horse, mule, mare, colt, foal or filly;

(2) "State stock inspector" means an employee of the department of livestock and designated by the department as a state stock inspector;

(3) "Deputy state stock inspector" means a person designated by the department as a deputy state stock inspector, who does not receive a salary or compensation from the department.

Section 104. There is a new section to be numbered 46-801.3, R.C.M. 1947, which reads as follows:

46-801.3. **Section 46-801.2 does not apply in certain instances.** Section 46-801.2 does not apply to:

(1) Livestock being transported through the state in interstate commerce without leaving the custody of the carrier;

(2) Livestock transported by railroad consigned to and which, without leaving the custody of the carrier, does reach a market at which the department of livestock regularly maintains a stock inspector, and a loading tally has been filed by the shipper with the carrier as provided in section 46-1008;

(3) Livestock when driven on the hoof and not moved by means of any motor vehicle, trailer, horse-drawn vehicle, railroad car or boat, by the owner from one county to the next adjoining county within the state onto land owned or controlled by the owner of livestock so moved for the purpose of pasturing, feeding, or changing the range thereof;

(4) Livestock when driven on the hoof or moved by means of a motor vehicle, trailer, horse-drawn vehicle, railroad car or boat, by the owner from one county to the next adjoining county within this state onto land owned or controlled by the owner of livestock without leaving land owned or controlled by the owner when moved for the purpose of pasturing, feeding, or changing the range thereof;

(5) Livestock when driven on the hoof from one county to an adjoining

county within this state for the purpose of shipment by railroad or delivery to a licensed public market by a person who has been the owner of that livestock for a period of at least three (3) months;

(6) Livestock from one county to be consigned to, and which actually reach by means other than railroad, a licensed livestock market located in another county of the state at which the department regularly maintains a stock inspector, and for which a market consignment permit has been obtained in a manner provided by law;

(7) Livestock when hauled by truck or trailer from one county to an adjoining county within the state for the purpose of shipment by railroad at which shipping point the department maintains a stock inspector or where a deputy state stock inspector is available, and for which a transportation permit has been obtained in the manner provided by law.

Section 105. There is a new section to be numbered 46-801.4, R.C.M. 1947, which reads as follows:

**46-801.4. Inspection for livestock removed from this state.** Except as provided for in subsections (1) and (2) of section 46-801.3 and subsection (5)(b) of section 46-801.2, nothing contained in this chapter authorizes or permits a person to remove or cause to be removed livestock from this state to a location outside of this state, unless the livestock has been inspected for brands by a state stock inspector or deputy state stock inspector and a certificate for the inspection has been issued in connection with and for the purpose of the transportation or removal as provided in this chapter.

Section 106. Section 46-802, R.C.M. 1947, is amended to read as follows:

**"46-802. Duties of state stock inspectors and deputy stock inspectors — department authorized to adopt rules.** (1) *State stock inspectors and deputy state stock inspectors, upon the application of the owner, or the duly authorized agent of the owner of livestock, shall inspect the livestock which are intended for sale, removal or shipment and issue his certificate of inspection therefor, if it appears with reasonable certainty that the applicant is the owner of the livestock or has the lawful right to the possession thereof.*

(2) *The inspection shall include an examination of the livestock and all marks and brands thereon to identify the livestock. The certificate of inspection shall be made in triplicate and shall specify the date of inspection, the place of origin and place of destination of the shipment, the name and address of the owner of the livestock or of the applicant for inspection, and the purchaser or transferee, if applicable, the class of the animal, the marks and brands, if any, upon the animal, and any other information and upon the form of certificate as the department may from time to time require. One (1) copy of the certificate shall be retained by the inspector, one (1) copy shall be furnished by the inspector to the owner or shipper of the livestock, and one (1) copy shall be filed by the inspector with the department within five (5) days.*

*If it appears with reasonable certainty that the applicant is the owner*

of *the livestock* or has the lawful right to the possession thereof, the state stock inspectors or deputy state stock inspectors or any sheriff or deputy sheriff, upon application of an owner or his agent of *the livestock* to be consigned and delivered directly to a licensed livestock market located in another county of the state, or delivered directly to a shipping point duly approved by the *department* where a livestock inspector is available for inspection, in an adjoining county, shall issue to *the person* a separate market consignment permit or transportation permit for each owner when the owner, or owners, or their duly authorized agents sign *the permit* certifying the brands, description and destination of *the livestock*. The market consignment permit or transportation permit shall be made in triplicate, shall specify the date and time issued, the place of origin and place of destination of the shipment, the name and address of the owner of the *livestock* and the name and address of the person actually transporting the *livestock* if different than the owner, the kind of *livestock*, the marks and brands, if any, upon the *livestock*, a description of the vehicle or vehicles to be used to transport *the livestock* to include the license number of the vehicles and any other information and upon *the form* of permit as the *department* may from time to time require. Any permit so issued shall be good for shipment within thirty-six (36) hours from date and time of issue, however, permits not used within this time limitation must be returned to the issuing officer to be canceled and to release *the permittee* from performance. One (1) copy of *the permit* shall be retained by the inspector or sheriff's office, one (1) copy shall be filed by the inspector or sheriff's office with the *department* within five (5) days of the date of issue, and one (1) copy shall be furnished by the inspector or sheriff's office to the owner or shipper of the *livestock* which copy of the permit shall accompany the shipment and be delivered to the state stock inspector at the livestock market or shipping point where the *livestock* is delivered.

*The department may adopt rules necessary to carry out this act."*

Section 107. Section 46-803, R.C.M. 1947, is amended to read as follows:

**"46-803. Seizure of livestock, retention of livestock, sale, disposal of proceeds.** (1) All state stock inspectors inspecting any livestock, either before or after shipment or removal from any county in this state, or upon a change of ownership, *may* inspect and seize either at the point of sale, shipment, or destination or en route any livestock, or proceeds thereof, which *the inspector believes* is stolen, or upon which brands have been altered or obliterated, or which does not conform to the description contained on the tally sheet furnished by the shipper thereof or to the description contained in any certificate of inspection issued before shipment or removal of *the livestock*.

(2) Upon taking possession of livestock *under* this act, a state stock inspector may retain *the livestock* in his possession for fifteen (15) days to make further investigation relative to its ownership. A state stock inspector may either at once or at any time within fifteen (15) days, sell *the livestock* at a licensed livestock market, or in the open market, for the best available price and remit the proceeds, less the cost of keeping and sale, to the *department* together with a full description of the *livestock* sold, giving marks and brand, if any, and a statement of the reason for

the seizure and sale. *The* proceeds shall be deposited by the *department* with the state treasurer and credited to the *department* fund, where it is subject to claim by the owner of the livestock in the same manner and for the same length of time as is provided by law for the making of claims for moneys arising from the sale of stray stock."

Section 108. Section 46-804, R.C.M. 1947, is amended to read as follows:

**"46-804. Fees for inspection and livestock transportation permits.** (1) For the service of inspection before removal from a county, or before change of ownership, the inspector making *the* inspections shall receive twenty-five cents (\$.25) per head for twelve (12) head or less, or three dollars (\$3) for from twelve (12) head to twenty (20) head and shall receive twenty cents (\$.20) per head for each *head* over twenty (20) head. For the issuance of a market consignment permit or transportation permit (other than a permanent permit) before removal from a county, the inspector, sheriff or deputy sheriff issuing *the* permits shall receive twenty-five cents (\$.25) for each permit issued for twelve (12) head or less; fifty cents (\$.50) for each permit for twelve (12) to thirty (30) head and one dollar (\$1) for each permit issued for over thirty (30) head and shall receive in addition his necessary actual expenses, to be paid by the owner or the person for whom the inspection is made or permit issued. For the issuance of a permanent horse transportation permit, the state stock inspector taking the application for permit shall receive five dollars (\$5) per head for each permit issued. All inspection and permit fees and expenses shall be collected by the inspector, sheriff, or deputy sheriff at the time of inspection or issuance of permit and all *the* fees and expenses collected by a deputy state stock inspector, sheriff or deputy sheriff shall be retained by him and all such fees and expenses collected by a state stock inspector shall be sent by him to the *department* for deposit in the state treasury to the credit of the earmarked revenue fund for the use of the *department*.

(2) For the service of inspection before *livestock* is sold or offered for sale at a licensed public market, a state stock inspector making *the* inspection shall receive twenty cents (\$.20) per head for *an* animal originating within the county in the state in which *the* market is maintained, or transported under a market consignment permit, and ten cents (\$.10) per head for *an* animal previously inspected before removal from a county as herein provided. All fees *shall* be paid by the owner or by the person for whom the inspection is made. For inspecting *an* animal before it is removed from the premises of a licensed public market the state stock inspector making *the* inspection shall receive ten cents (\$.10) per head from the owner or the person for whom the inspection is made. All fees for inspection at *the* market shall be collected by the state stock inspector making the inspection at the time *the* inspection is made and shall be sent by him to the *department* for deposit in the state treasury to the credit of the earmarked revenue fund for the use of the *department*.

(3) All inspection fees and expenses *shall* be paid to the *department* for deposit in the state treasury to the credit of the earmarked revenue fund for the use of the *department*. State stock inspectors shall be paid for their services and receive their expenses *as fixed by the department*."

Section 109. Section 46-806, R.C.M. 1947, is amended to read as follows:

"46-806. **Penalties for violations of act.** (1) A person who removes or causes to be removed from a county in *this state*, *livestock* (a) without having the *livestock* inspected *before* removal where an inspection is required by law; (b) without obtaining a market consignment permit or transportation permit, where the permits are obtainable by law; (c) and does obtain a market consignment permit for *livestock* but does not deliver the *livestock* transported thereunder to the livestock market designated in the market consignment permit; (d) and does obtain a transportation permit for the *livestock* but does not deliver the *livestock* transported thereunder to the destination as shown on the transportation permit and fails to have the *livestock* so transported inspected at the point of destination or does not file a loading tally with the carrier as provided in section 46-1008; is guilty of a misdemeanor and shall be punishable as provided in subsection (6) of this section.

(2) A person who sells or offers for sale at a livestock market, or removes or causes to be removed from a livestock market, *livestock* without having the *livestock* inspected is guilty of a misdemeanor and is punishable as provided in subsection (6) of this section.

(3) A person who *ships* by railroad carrier, and the railroad carrier transporting, *livestock* for which a loading tally has been filed as provided by section 46-1008 and for which shipment of *livestock* an inspection has not been made, and after shipment, causes or permits the *livestock* to leave the custody of the railroad carrier at a place other than where *this state* regularly maintains a stock inspector, is guilty of a misdemeanor and shall be punishable as provided in subsection (6) of this section.

(4) A person who has in his charge *livestock* being removed from a county in the state, and for which an inspection certificate or a market consignment permit has been issued, and fails to have in his possession accompanying the *livestock* the inspection certificate or market consignment permit as issued for the *livestock*; or who, having the certificate of inspection or market consignment permit, fails to exhibit them to a sheriff, deputy sheriff, constable, highway patrolman, state stock inspector or deputy state stock inspector at their request, is guilty of a misdemeanor and is punishable as provided in subsection (6) of this section.

(5) A person violating any of the provisions of this act is guilty of a misdemeanor and is punishable as provided in subsection (6) of this section.

(6) Upon conviction of a person, firm, association, or corporation under this act, they shall be fined not less than fifty dollars (\$50) nor more than five hundred dollars (\$500) or imprisoned in the county jail for a period of not more than six (6) months, or both *fined and imprisoned*. Of all fines assessed and collected under this act, fifty per cent (50%) thereof shall be paid into the state treasury and credited to the earmarked revenue fund for the use of the *department*, and fifty per cent (50%) thereof shall be paid into the general fund of the county in which the conviction occurred."



Section 110. Section 46-809, R.C.M. 1947, is amended to read as follows:

**"46-809. Order requiring sheep removal permits — petition by sheep raisers.** The *department* shall, within sixty (60) days of the filing of a petition signed by not less than fifty-one per cent (51%) of the sheep raisers owning not less than fifty-one per cent (51%) of the sheep in a county of *this* state requesting such action, make an order requiring a permit for the removal of any sheep from *the* county."

Section 111. Section 46-810, R.C.M. 1947, is amended to read as follows:

**"46-810. Permit required for removal of sheep after order — violation as misdemeanor.** *Effective on the date of the department's order which requires a permit for the removal of sheep from a county, it is unlawful for a person to remove sheep from the county without a permit. A person who removes, authorizes, or assists in the removal of sheep from the county without a permit is guilty of a misdemeanor.*"

Section 112. Section 46-811, R.C.M. 1947, is amended to read as follows:

**"46-811. Form and issuance of permits — fee.** Before making an order under this act, the *department* must provide for the form of the permit and for issuance of the permits by livestock inspectors in the affected county. Fee for issuance of the permit is fifty cents (\$.50)."

Section 113. Section 46-812, R.C.M. 1947, is amended to read as follows:

**"46-812. Publication of notice of sheep removal permit order.** Before the effective date of an order made under this act, the *department* must publish a notice containing the text and effective date of the order at least three (3) times in a paper of general circulation in the county and must have a copy of the order mailed to every sheep raiser in the county."

Section 114. Section 46-813, R.C.M. 1947, is amended to read as follows:

**"46-813. Removal of permit requirement.** *On receipt of a petition signed in the manner specified in section 46-809, requesting the removal of the permit requirement, the department shall, at its next meeting, order the permit requirement removed.*"

Section 115. Section 46-902, R.C.M. 1947, is amended to read as follows:

**"46-902. Inspection of public markets.** *Livestock inspectors, which include stock inspectors of a county or district, the sheriff of a county, or a representative of the department of livestock, may enter upon the premises where livestock is being held or sold, and be accorded every facility by the owners thereof in determining whether a violation of the law is being made, or is likely to be made, by a person, association, or corporation. The inspection may not unnecessarily interfere with the conduct of*

the sales. *Livestock* so sold at the market *may not* be delivered to the purchaser until he *has* first received an inspection certificate, issued by one of the officers designated *in this section*, for the inspection of *the* livestock, showing clearly and explicitly that the person making *the* inspection is satisfied as to the ownership of *the* livestock and the health of all *livestock* so sold."

Section 116. Section 46-903, R.C.M. 1947, is amended to read as follows:

**"46-903. Quarantine of diseased animals — ownership of animals to be determined — proceeds from sale of stock of unknown owner.** *If the livestock inspector at a sale find any livestock afflicted with an infectious or contagious disease, he shall immediately take possession of the livestock and place them in quarantine, to be disposed of as directed by the department. If there is any question respecting the ownership of livestock sold, the livestock inspector may take possession of the livestock. The livestock inspector shall notify the person in charge of the market and conducting the sales, and the person who has purchased the livestock at the sale, within a reasonable time. Where livestock is sold, the ownership of which is not known or cannot be determined by the livestock inspector, they may be sold as strays, and the net proceeds derived from the sale shall be sent to the department to be held and kept, together with a complete description of the livestock, and the brands of the livestock. The money shall be held and retained by the department for the use and benefit of the owner of the livestock, and paid to the owner when ownership has been satisfactorily determined. If the proceeds of the sale sent to the department are not claimed by the lawful owner of the livestock within two (2) years from the date of the receipt of the proceeds the money shall be held and disposed as provided in section 46-904."*

Section 117. Section 46-904, R.C.M. 1947, is amended to read as follows:

**"46-904. State treasurer to hold proceeds of sales of stray stock.** *When this law has been fully complied with, and the money paid into the state treasury, two (2) years after its receipt from the department, the state treasurer shall hold the money in the department fund and his books shall show all information with respect to the sale and proceeds from each head, in accordance with the published yearly report of the department. The money shall be held by the state treasurer for the use and benefit of the rightful owner and claimant of the money for the period of one (1) year, after which it becomes state property and shall be placed to the credit of the earmarked revenue fund for the use of the department."*

Section 118. Section 46-906, R.C.M. 1947, is amended to read as follows:

**"46-906. Definitions.** *Unless the context requires otherwise, in this act:*

(1) *"Livestock"* means and includes horses, mules, cattle, swine, sheep and goats;

(2) *"Person"* means a person, copartnership, association or corporation;

(3) "*Board*" means the board of livestock provided for in section 82A-1303;

(4) "*Certificate*" means the certificate of public convenience and necessity authorized to be issued under this act;

(5) "*Commission basis*" means the compensation or charge imposed on the owner of livestock for the services rendered *the* owner by the operator of the livestock market;

(6) "*Livestock market*" means a place where a person *assembles* livestock for either private or public sale by him and *the* service is compensated for by *the* owner, on a commission basis or otherwise, except: (a) A place used solely for a dispersal sale of the livestock of a farmer, dairyman, livestock breeder, or feeder who is discontinuing business and no other livestock is sold *there* or offered for sale; (b) A farm, ranch, or place where livestock either raised or kept thereon for the grazing season or for fattening is sold, and no other livestock is brought there for sale or offered for sale; (c) The premises of a butcher, packer, or processor who received animals exclusively for immediate slaughter; (d) The premises of a person engaged in the raising of livestock for breeding purposes only, who limits his sale to *livestock* of his own production; (e) A place where a breeder or an association of breeders of livestock of any class assemble and offer for sale and sell under his or their own management any livestock, when *the* breeder or association of breeders *assumes* all responsibility for the sale and the title of livestock sold."

Section 119. Section 46-907, R.C.M. 1947, is amended to read as follows:

"46-907. **Regulation of livestock markets.** The board shall: (1) Supervise and regulate livestock markets in this state; (2) regulate the properties, facilities, operations, services and practices of all livestock markets; (3) supervise and regulate livestock markets in all matters affecting the relationship between *the* operators and owners of livestock, and between *the* operators and purchasers of livestock, at *the* markets; (4) prescribe by general order, or otherwise, rules in conformity with this act applicable to all livestock markets, and not in conflict with the laws of the United States or rules and regulations of the United States department of agriculture or other federal agencies."

Section 120. Section 46-908, R.C.M. 1947, is amended to read as follows:

"46-908. **Certificate to operate livestock market required — application, contents of — fee.** A person *may not* operate a livestock market in *this* state without first *obtaining* from the board, under this act, a certificate declaring that public convenience and necessity require *the* operation. A person making application for a certificate shall do so in writing, verified by the applicant, and specifying the following:

(1) The name and address of the applicant, and the names and addresses of its officers, if any;

(2) The place where *the* applicant proposes to operate a livestock market;

(3) A complete and detailed description of the property and facilities proposed to be used in connection with *the* livestock market;

(4) The commissions or charges applicant proposes to impose on the owners of livestock for services rendered to them by applicant in the operation of *the* livestock market;

(5) A detailed statement showing the assets and liabilities of *the* applicant;

(6) The location of other livestock markets within a radius of two hundred (200) miles of the proposed livestock market, and the names and addresses of the operators thereof;

(7) A detailed statement of the facts upon which *the* applicant relies showing public convenience and necessity for *the* livestock market, including the anticipated revenue from inspection fees that may be derived therefrom by *this* state;

(8) *Any* additional information the *board* may require;

(9) *The* application shall be accompanied by a fee of one hundred dollars (\$100), which shall also be considered the first annual fee if *the* application is granted, however, the annual fee shall be paid on the following May 1 and each year thereafter, as provided herein."

Section 121. Section 46-909, R.C.M. 1947, is amended to read as follows:

"46-909. **Hearing and procedure — limitation upon issuance of certificates.** (1) Upon the filing of *the* application, the *board* shall fix a time and place for a hearing thereon, which shall not be less than ten (10) days after *the* filing. The *board* shall *have* a copy of *the* application and notice of hearing thereon served by mail upon: (a) the operators of any other livestock markets that in the opinion of the *board* might be affected by the granting of any such certificate; (b) the secretaries of the Montana stockgrowers association and the Montana woolgrowers association; (c) the secretary of the district livestock association, if any; and, (d) the secretary of the livestock association or associations, if any, at the place or within the vicinity of the proposed livestock market, if known to the *board*; and, (e) upon any railroad company operating into or through any town or city in which the proposed livestock market will be located, at least ten (10) days before the date of hearing.

(2) If, after hearing upon *the* application, the *board finds* from the evidence that public convenience and necessity require the authorization of the proposed livestock market, a certificate therefor shall be issued to the applicant. In determining whether public convenience and necessity require *the* livestock market, the *board* shall give reasonable consideration to the service rendered by other existing livestock markets in *this* state and the effect upon them if the proposed livestock market is authorized, and shall give due consideration to the likelihood of the proposed service being permanent and continuous throughout twelve (12) months of the year. *The board may* not authorize the proposed livestock market unless it *appears* from the evidence submitted at the hearing that the minimum revenue derived by the state from inspection fees shall be equal to seventy-five per cent (75%) of the cost to the state in maintaining a resident livestock inspector and an office for him at *the* proposed livestock

market, and the cost of maintaining at *the* office of a sufficient record of the recorded livestock brands and marks in the state; however, the *board* may authorize the *proposed livestock market* if the operator of the proposed market shall, by bond approved by the *board* guarantee the payment of *the* minimum revenue."

Section 122. Section 46-910, R.C.M. 1947, is amended to read as follows:

"46-910. **Livestock markets licensed — grounds of discontinuance.** *If after a hearing in the manner provided in this act it appears to the board that a livestock market licensed under this act has, for a period of two (2) successive years, failed to provide the minimum revenue to the state as provided in this act, the livestock market may be discontinued by order of the board.*"

Section 123. Section 46-911, R.C.M. 1947, is amended to read as follows:

"46-911. **License fee.** A person operating a livestock market in this state shall pay on May 1, annually, a license fee of one hundred dollars (\$100) to the *board*. All fees under this act shall be paid into the state treasury, and placed by the state treasurer to the credit of the earmarked revenue fund for the use of the *board*."

Section 124. Section 46-912, R.C.M. 1947, is amended to read as follows:

"46-912. **Bond required — conditions.** Every person operating a livestock market in this state shall provide a bond in favor of *this* state, upon a form and with surety to be approved by the *board*, in the minimum penal sum of ten thousand dollars (\$10,000) or such greater sum as the *board* may determine, conditioned upon: (1) the payment *immediately* upon the sale of *the* livestock of all money received, less reasonable expenses and commissions, by the licensee and operator of *the* livestock market to the rightful owner of livestock so consigned and delivered to *the* licensee for sale; (2) the payment of the minimum fees as provided by section 46-909; and, (3) a full compliance with this act, including all rules *adopted under this act*. When approved *the* bond shall be filed with the *board*. Actions of law may be brought in the name of the state upon *the* bond for the use and benefit of a person who *suffers* loss or damage from violations thereof, and may be brought by *the* person suffering loss or damage in the county of his residence."

Section 125. Section 46-913, R.C.M. 1947, is amended to read as follows:

"46-913. **Records kept by licensees.** Each licensee shall keep accounts, records, and memoranda, and shall make reports, *which the board requires*, and the *board* and its authorized agents and employees shall at all times have access to *the* accounts, records, and memoranda for inspection and examination."

Section 126. Section 46-914, R.C.M. 1947, is amended to read as follows:

"46-914. **Rules — board to adopt.** The board shall adopt and enforce rules it *considers* necessary or advisable, in the interest of livestock health or public health."

Section 127. Section 46-915, R.C.M. 1947, is amended to read as follows:

"46-915. **Cancellation or suspension of certificates — grounds.** Finding by the *board* that a licensee: (a) has been guilty of fraud or misrepresentation as to the titles, charges, number, brands, weights, proceeds of sale, or ownership of livestock; (b) has violated any of the provisions of this act; (c) has violated any of the rules adopted and published by the board; (d) has violated sections 46-801 *through* 46-806; or, (e) has violated any of the conditions of the bond, as provided by this act, *is* sufficient cause for the cancellation or suspension of the certificate of the offending operator of *the* livestock market."

Section 128. Section 46-916, R.C.M. 1947, is amended to read as follows:

"46-916. **Investigation of actions of licensees — hearing of complaints — additional powers and duties of members of board or agents — witnesses.** (1) The board or any member or *agent of the board*, may upon a motion, or upon a verified complaint in writing of a person, *when considered* necessary, *may* investigate the actions of a licensee, and if *found* proper to do so, shall file a complaint against the licensee with the *board*. *The* complaint shall be set for hearing before the *board* upon ten (10) days' notice served upon *the* licensee.

(2) Any investigation, inquiry or hearing which the *board may* undertake or hold, under this act, may be undertaken or held by or before any *board* member or by or before any agent or examiner of the *board* designated for *that* purpose by the *board*. A finding, order, or decision made by a *board* member or agent or examiner of the *board* so designated, pursuant to *the* investigation, inquiry, or hearing when approved and confirmed by the *board* and ordered filed in its office, *is considered* the finding, order, or decision of the *board*. An agent or examiner of the *board may* administer oaths, examine witnesses, and receive evidence."

Section 129. Section 46-917, R.C.M. 1947, is amended to read as follows:

"46-917. **Appeal by licensee or applicant for certificate — bond — procedure.** An *appeal of a decision of the board for refusing to grant* an application for a certificate or *suspending or revoking a certificate of a licensee shall be taken* to the district court of the county in which the proposed livestock market is to be located or in which the licensee has his principal place of business. *The appellant shall file a bond with the clerk of the district court in the sum of three hundred dollars (\$300) to be approved by the judge of the court, conditioned to pay all costs that may be awarded against the appellant in the event of an adverse decision or the decision of the board being affirmed. The cost of preparing transcripts shall be paid by appellant. In case of suspension or revocation of a certificate the filing of the notice and bond shall stay the order of the board until the final determination of the appeal. If the appellant fails to perfect his appeal the stay shall automatically terminate.*"

Section 130. Section 46-918, R.C.M. 1947, is amended to read as follows:

"46-918. **Operator of market to warrant title of livestock sold — other duties.** The operator of each livestock market in this state shall warrant to the purchaser thereof the title of all livestock sold through his livestock market and shall be liable to the rightful owner thereof for the net proceeds in cash received for *the* livestock so sold. An operator of a livestock market *shall*, when notified by the authorized brand inspector, that there is a question as to whether any designated livestock sold through *the* market is lawfully owned by the consignor thereof, hold the proceeds received from the sale of *the* livestock for a reasonable time not to exceed thirty (30) days, to permit the consignor to establish ownership. If at the expiration of that time, the consignor fails to establish his lawful ownership *to the* livestock, *the* proceeds shall be transmitted by *the* operator of a livestock market to the *board*. *The board may* dispose of *the* proceeds in accordance with Chapter 10 of this title, relating to the distribution of estray money, and the *board's* receipt therefor shall relieve *the* operator of a livestock market from further responsibility for *the* proceeds. Proof of ownership and account of all sales of livestock shall be transmitted by the authorized brand inspector to the *board*."

Section 131. Section 46-918.1, R.C.M. 1947, is amended to read as follows:

"46-918.1. **Operator of market to issue a receipt for livestock consigned.** A person operating a livestock market as defined by section 46-906 which must have a certificate issued by the *board* according to section 46-908, shall issue a receipt to any person, firm, partnership, or corporation selling livestock through a livestock market showing the number and description of livestock he has consigned for sale."

Section 132. Section 46-920, R.C.M. 1947, is amended to read as follows:

"46-920. **Penalties for violating act.** A person who *violates* any provisions of this act or *rules* adopted by the board *under* this act, *is* guilty of a misdemeanor and upon conviction shall be *fin*ed not less than one hundred dollars (\$100) nor more than six hundred dollars (\$600), or *imprisoned* in the county jail not less than thirty (30) days nor more than six (6) months, or both *fin*ed and *imprisoned*. A person who *has* been convicted of a violation of this act *and who subsequently is* found guilty of a violation *of this act* shall be *fin*ed not less than two hundred dollars (\$200) nor more than one thousand dollars (\$1,000), or *imprisoned* in the county jail for not less than three (3) months nor more than six (6) months, or both *fin*ed and *imprisoned*. A second conviction *requires the board* to suspend or cancel the certificate of the person without a hearing, *and the person may* not again be granted a certificate for a period of one (1) year."

Section 133. Section 46-1001, R.C.M. 1947, is amended to read as follows:

"46-1001. **Estrays — department authorized to take possession of.** The *department of livestock* and its appointed stock inspectors *may* take

possession of estrays found running at large *in this* state, and *may* dispose of the *estrays*, subject to the following restrictions."

Section 134. Section 46-1002, R.C.M. 1947, is amended to read as follows:

"46-1002. **Taking up and disposal of estrays — advertisement.** A stock inspector authorized by the *department* shall take into his possession *an estray* found *in* his district, and shall either ship, or arrange for the shipment of, *the estray* to a licensed livestock market for sale. *The* proceeds from *the* sale *shall* be disposed of *under* sections 46-1004 and 46-1006; or he may hold *the estray* in his possession, and care for the *estrays* in the cheapest and most practicable manner for a period of not less than thirty (30) days, nor more than sixty (60) days, during which time he shall advertise that he holds *the* estray, and that unless claimed by the owner he will, on a date to be specified in *the* notice, sell *the* estray at a public auction to the highest bidder for cash. *The* notice shall be published in the newspaper doing the county printing of the county *in which* the estray is found, and in addition *to that paper* in a paper published in the town or city nearest the place *in which* the estray is held. *This* notice shall be published at least once a week for four (4) consecutive weeks, and shall contain a statement of the date of the sale, the place where *the* sale is to be held, and a general description of *the* estray, including the sex and the approximate age, together with an illustration of the brand and the position of *the* brand *on the* estray, and a description of the place or locality where *the* estray was found or taken. *The* owner of *the* estray may appear and claim *it* at any time *before* the sale or shipment, as provided *in this chapter*, and without cost or expense *to the* owner."

Section 135. Section 46-1003, R.C.M. 1947, is amended to read as follows:

"46-1003. **Sale at public auction — branding.** On the date specified in the notice provided *for* in section 46-1002, *the* stock inspector shall *sell the estray* at a public auction to the highest bidder for cash. *Before* removal from *the* sale the stock inspector *shall brand* the estray with the recorded estray brand of the *department*."

Section 136. Section 46-1004, R.C.M. 1947, is amended to read as follows:

"46-1004. **Expenses, how paid — disposition of proceeds of sale.** *Expenses* for collecting, holding, advertising, and selling of *the* estray shall be paid out of the gross proceeds of the sale of *the* estray, and the balance of the proceeds of *the* sale shall be forwarded to the *department* to be advertised as estray funds in the manner provided by law. *The* proceeds *are* subject to claim by the owner of the animal for a period of two (2) years from the date of *the* sale. *If* the owner of *the* estray claims *the* animal *before* the sale of *the* animal, the expense incurred by the stock inspector *to that time* shall be paid by the *department* as an expense of *the department*."

Section 137. Section 46-1005, R.C.M. 1947, is amended to read as follows:



"46-1005. **"Estray," defined.** *In this act "estray" means a horse, mule, mare, gelding, colt, cow, ox, bull, stag, steer, heifer, calf, sheep, or lamb, not bearing a brand and the ownership of which cannot be determined by the stock; inspector of the district in which the animal is found, by inquiry among reputable resident stock owners or freeholders; or any of these animals bearing a recorded brand, the owner of which brand cannot be located at or through the post office designated on the records of the department, or which owner cannot be located by the stock inspector of the district where the estray is found by inquiry among reputable resident stock owners or freeholders; or any of these animals which bears an unrecorded brand, the owner of which unrecorded brand cannot be ascertained by the stock inspector of the district in which the animal is found, by inquiry among reputable resident stock owners or freeholders.*"

Section 138. Section 46-1006, R.C.M. 1947, is amended to read as follows:

"46-1006. **Publication of description of estrays sold — disposition of proceeds remaining in state treasury.** A full description of estrays for which the proceeds derived from the sale remains in the hands of the treasurer unclaimed shall be published for the period of two (2) consecutive weekly, semimonthly, or monthly issues after May 1 of each year in not more than four (4) weekly, semimonthly, or monthly publications in this state. The publications shall be designated by the department, and when the publication has been made and the proceeds from the sale of the estrays has remained in the hands of the state treasurer for a period of two (2) years; it shall be, by the treasurer, upon request of the department, immediately be placed to the credit of the earmarked revenue fund for the use of the department."

Section 139. Section 46-1008, R.C.M. 1947, is amended to read as follows:

"46-1008. **Shipment of stray cattle — duty of shipper and railroad agents — petition for inspection.** A person, agent, firm, corporation, pool, or roundup association who ships cattle by railroad to a market where Montana livestock inspectors are maintained, may ship with their own cattle estrays which are among them. They must before shipment, or at the time of loading the cattle on the cars for shipment, carefully and as accurately as possible inspect or tally the brand on the cattle, whether their own or estrays, making a list in duplicate. The list shall state the date of loading, name of shipper, description of brands on each animal, number and class of the cattle bearing the brand, destination, name of the commission firm to whom consigned, and the name of the person in charge of the shipment; and in the case of cattle not owned by the shipper which are marked with a recorded brand, or where the owner is known to be someone other than the shipper, the shipper must obtain the written consent of the owner, or the written consent of a state stock inspector or a deputy state stock inspector before shipment of the cattle. The railroad agent at the point of loading shall require from the shipper the lists described in this act, and shall forward, within twenty-four (24) hours after loading, one (1) copy to the department, and another copy to the Montana brand inspector at the point of destination. However, in a county where there has been established an association of livestock

people, the *department*, on the receipt of a petition from an association, shall require that all cattle shipped by rail from the county be inspected by a state stock inspector or deputy state stock inspector *before the cattle are loaded*. The petition must be signed by at least fifty-one per cent (51%) of the owners of cattle in the county, and *these petitioners must own* at least fifty-five per cent (55%) of the cattle as shown by the most recent completed assessment records of the county assessor."

Section 140. Section 46-1011, R.C.M. 1947, is amended to read as follows:

"46-1011. **Powers and duties of inspectors outside of state.** The stock inspector appointed to inspect Montana cattle at a cattle market outside this state shall be commissioned by the *department*, and *may* inspect cattle that come from this state to the market where he *is* located. *He has* the same power as stock inspectors *in this* state to inspect and seize stock which he *has* reason to believe is stolen, or *on* which brands have been altered or obliterated. *He may* take the proceeds of *an* animal in dispute, or bearing altered or burned brands, remitting *the* proceeds to the *department*, which shall hold *the proceeds* pending a decision on ownership. The stock inspector shall, *on* receipt of the certified lists mentioned in sections 46-1009 and 46-1010, make *an* inspection of the cattle listed, and if, *on* comparison of *the* list with his own inspection, he *finds* a difference or discrepancy, he shall make a second inspection of any animal *for* which the two tallies do not agree, clipping the animal when necessary to determine, accurately and definitely, which inspection or tally is correct. *He* shall *immediately* make *an* inspection report to the *department*, stating in detail *where the* discrepancies with the loading tally exist, and calling special attention to his own inspection of *the* animal. *He* shall, *in* his own report, make mention of any animal, with the brands *on the animal*, which were taken out by the shipper in charge of the stock while in transit between the original loading point and point of final destination. *These* reports *shall* be entered in a suitably bound book and *are* at all times open to public inspection."

Section 141. Section 46-1012, R.C.M. 1947, is amended to read as follows:

"46-1012. **Department to furnish blanks.** The *department* shall have printed the necessary blanks for the tallying of cattle at loading *points* under section 46-1008, and *it* shall furnish *the blanks* free to shippers on application. The expense of *the* printing shall be paid *by the department*."

Section 142. Section 46-1101.1, R.C.M. 1947, is amended to read as follows:

"46-1101.1. **Definitions.** (1) "Animal hide" means the hide of a cattle, horse, mare, colt, mule, jack, or jenny.

(2) "Seller" means a person selling or delivering animal hides for or without a pecuniary consideration.

(3) "Inspector" means a sheriff, deputy sheriff, state stock inspector or deputy state stock inspector appointed by the *department of livestock*.

(4) "Hide certificate" means a certificate showing a transfer of ownership of animal hides."

Section 143. Section 46-1101.2, R.C.M. 1947, is amended to read as follows:

"46-1101.2. **Hide certificate — identification.** (1) A seller of an animal hide shall obtain a hide certificate from the person receiving the hide. The *department* shall prescribe the form of the certificate which shall include the marks and brands on each hide. The party receiving the hide must designate where it will be kept for thirty (30) days following delivery. The certificate must be signed by the seller or his agent and the person receiving the hide.

(2) Hide certificates, tags and glue shall be furnished to the sheriff of each county by the *department* at cost and by the sheriff to any person requiring the certificates, tags, and glue. Only those certificates, tags, and glue distributed by the *department* may lawfully be used under this act. The original certificate shall be filed with the sheriff of the county of the seller's residence. One (1) copy shall be sent by the party receiving the hide to the *department*, one (1) retained by the seller, add one (1) by the hide buyer. On reasonable notice, a sheriff, deputy sheriff, state stock inspector, or deputy state stock inspector *may* inspect the hide certificate copy of the seller or buyer. The *department* shall prescribe an identification tag to be affixed to each hide by the person receiving the hide when it is delivered. Hide dealers and buyers must mail the original hide certificate to the sheriff of each county in which hides are purchased within five (5) days after purchase."

Section 144. Section 46-1107, R.C.M. 1947, is amended to read as follows:

"46-1107. **Hide dealer or buyers license fee — disposition of proceeds.** A hide dealer or buyer shall pay to the *department* a license fee of five dollars (\$5) for each established place of business at which the hide dealer or buyer purchases or deals in hides, before engaging in or conducting *this* business in *this* state. The license *continues* in force for that calendar year. The moneys collected from the licenses shall be placed in the earmarked revenue fund of the *department*. The license must be renewed January 1 of each year."

Section 145. Section 46-1114, R.C.M. 1947, is amended to read as follows:

"46-1114. **Seizure and sale of hides when ownership cannot be determined — disposition of proceeds.** (1) A state stock inspector or other officer *who has* authority to make an inspection of a slaughtered beef, veal or hide of a beef or veal, *may* seize and hold the hide, when on inspection the officer finds that the brand is so altered, obliterated, or defaced that the original brand cannot be determined by a reasonable inspection, or *when he* finds that ownership cannot be established by the brand or by other satisfactory proof.

(2) If within fifteen (15) days after the seizure of the hide, proof of ownership cannot be established either by brand, bill of sale, or otherwise, the officer may sell the hide at the best available price and remit the proceeds, less the cost of processing, storing, and selling to the *department* together with a full report of his investigation. The report shall contain

a statement of the reason for the seizure and sale together with any tendered proof of ownership of any party. *The proceeds shall be deposited by the department with the state treasurer and credited to the stock estray fund, where it shall be subject to claim by a party showing proper proof of ownership in the same manner as provided in section 46-1004.*"

Section 146. Section 46-1410, R.C.M. 1947, is amended to read as follows:

"46-1410. **Stock trespassing may be retained.** (1) If *an* animal breaks into an inclosure surrounded by a legal fence, or is wrongfully on the premises of another, the owner or occupant of the inclosure or premises may take into his possession the *trespassing* animal, and keep the *animal* until all damages, together with reasonable charges for keeping and feeding *the animal* are paid. The person *who takes the* animal into his possession shall, within seventy-two (72) hours *after he takes possession*, give written notice to the owner or person in charge of the animal, stating that he has taken *the* animal. *The* notice shall also give the date of the taking, the description of the animal taken, including marks and brands, if any, the amount of damages claimed, and the charge per head per day for caring for and feeding the *animal*, and shall describe, either by legal subdivisions or other general description, the location of the premises *on which the* animals are held. In all cases a copy of *the* notice shall also be posted at a point where *the* stock was taken.

(2) *The* notice shall be given to the owner or person in charge only when *the* owner or person in charge of the animal is known to the person taking the *animal* and resides within twenty-five (25) miles of the premises *on which the* animals have been taken. *If* the owner or person in charge of *the animal* resides more than twenty-five (25) miles from the place of *the* taking, *the* notice shall be mailed to him, and in *this* case, and also *if* the owner is unknown, a *similar* notice shall be mailed to the department of livestock and the sheriff of the county in which *the* animals have been taken. *On* receipt of *the* notice, the sheriff shall post a copy of *the notice* at the courthouse and shall send by registered mail a copy of *it* to the owner of the stock, if known to him. *If* unknown to him, the sheriff shall send a copy of *the* notice to the nearest state livestock inspector.

(3) *If* the parties within five (5) days thereafter *do not* agree to the amount of damages, the lien claimant must within ten (10) days thereafter institute a civil action to foreclose his lien in a court of competent jurisdiction. *Pending* the outcome of *the* suit, the person taking *the* stock may, at the expense of the owner, retain a sufficient amount of stock to cover the amount of damages claimed by him. *The* defendant may, after the institution of *the* action, *on* filing a bond executed by two (2) or more sureties and approved by the court, in double the sum sued for, conditioned for the payment to the plaintiff of all sums, including costs that may be recovered by *the* plaintiff, have all livestock *returned to him*, and *the* person is liable to *the* owner for any loss or injury to *the* stock occurring through his fault or neglect. If the person taking *the* stock *fails* to recover in *the* action a sum equal to that offered him by the owner of the stock, the former *bears* the expense of keeping and feeding *the* stock while in his possession.

(4) A person *who takes or rescues* an animal from the possession of the person taking the *animal*, without his consent, is guilty of a misdemeanor, *and shall be fined* not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500)."

Section 147. Section 46-1701, R.C.M. 1947, is amended to read as follows:

"46-1701. **Rams and he-goats not to run at large.** (1) It is unlawful for *an owner or person having the management or control of a ram or he-goat* to permit *it* to run at large between August 1 and December 1 of each year.

(2) *A person violating this section is guilty of a misdemeanor."*

Section 148. Section 46-1801, R.C.M. 1947, is amended to read as follows:

"46-1801. **Definitions.** *Unless the context requires otherwise, in this act:*

(1) "*Abandoned horse*" means *a horse, mare, gelding, filly, jack, mule, or other animal of the genus equus, one (1) year of age or over, and unbranded, or if branded, which has escaped assessment for taxation for the year immediately preceding its impounding as provided for in this act, and running at large on the open range of this state, including foals running with dams coming within the above definition. An animal not bearing a decipherable brand which is recorded with the department of livestock is considered unbranded.*

(2) "*Open range*" means all lands in *this state* not inclosed by a fence. The term "*open range*" includes all highways outside of private inclosures and used by the public, whether the *highways* have been formally dedicated to the public or not.

(3) "*Person*" includes individuals, associations, persons, and corporations."

Section 149. Section 46-1804, R.C.M. 1947, is amended to read as follows:

"46-1804. **Notice of holding roundup — publication — form.** Notice of the roundup shall be given by the board of county commissioners at least thirty (30) days *before the date when the roundup begins. The notices shall be published* at least once a week for three (3) successive weeks in some newspaper of general circulation, printed and published in the county in which *the roundup is to be held, if a newspaper of this type is printed and published in the county. The notice shall be posted* in at least five (5) public places, outside of the county seat of *the county on public highways in the county or district, as the case may be, in which the roundup is to be held. Three (3) notices shall be posted* in three (3) public places in *the county seat, one of the notices shall be posted at the front door of the courthouse. The notices posted outside of the county seat are to be posted not less than two (2) miles apart and all posted notices are to be posted at least twenty (20) days before the date on which the roundup begins as stated in the notice. If no newspaper is printed and*

published in *the* county, publication in a newspaper is not required. At least twenty (20) days before the date *on* which the roundup is to begin, a copy of *the* notice shall be *filed with the department*, by the clerk of *the* board of county commissioners."

Section 150. Section 46-1903, R.C.M. 1947, is amended to read as follows:

"46-1903. **Department to supervise destruction of predatory animals — co-operation with other agencies — administration of moneys.** (1) *The department of livestock shall conduct the destruction, extermination, and control of wild animals, including wolf, wolverine, coyote, mountain lion, lynx, cougar, bobcat and other wild animals predatory in nature and capable of killing, destroying, maiming, or injuring domestic livestock or domestic poultry; and the protection and safeguarding of livestock and poultry in this state, against depredations from these animals. The department shall formulate the practical programs for accomplishing these objectives in this state, and for carrying out the programs in an efficient and practical manner, responsive to the need for control in each area of this state. The department shall adopt rules applicable to predatory animal control, which are necessary and proper for the systematic destruction of the wild animals by hunting, trapping, and poisoning operations, and payments of bounties. The department shall make field, area, range, or other orders and instructions, including orders and instructions to hunter and trapper personnel and others, which are appropriate in the various areas, at different seasons of the year, taking into consideration the habits, presence, migrations, or movements of the animals, and their attacks on livestock and poultry, either singly or in packs or bands. The department shall cooperate with authorized representatives of the federal government, including the Biological Survey and the Fish and Wild Life Service, the state fish and game commission, boards of county commissioners, voluntary associations of stockgrowers, sheepgrowers, ranchers, farmers, and sportsmen, and corporations and individuals, in the systematic destruction of wild animals by hunting, trapping, and poisoning operations.*

(2) *The department shall administer and expend for predatory animal extermination and control all money which is made available to it, including the money from the levy under section 84-5214, and all money which is made available to the department by appropriations made by the legislature for predatory animal control by the department. The department shall expend the funds for predatory animal control by all effective means, including employment of hunters, trappers, and other personnel, procurement of traps, poisons, equipment, and supplies, and payment of bounties in the discretion of the department, responsive to the necessities of control in various areas of the state.*

(3) *This section does not interfere with or impair the power and duties of the fish and game commission in the control of predatory animals by the commission, as authorized by law, nor the obligation of the commission to expend its funds in cooperation with the department, for predatory animal control, as required by law. Funds of the fish and game commission for the cooperative predatory animal control shall be administered and expended by the fish and game commission.*"

Section 151. Section 46-1904, R.C.M. 1947, is amended to read as follows:

**"46-1904. Disposal of proceeds from sale of skins, hides and specimens — presenting to museums.** *Furs, skins, and specimens taken by hunters or trappers shall be sold by the department. The proceeds from the sales shall be credited to the earmarked revenue fund. The proceeds shall be used to carry out this act. Specimens may be presented, free of charge, to a state museum or institution."*

Section 152. Section 46-1907, R.C.M. 1947, is amended to read as follows:

**"46-1907. Bounty inspectors — form of claim — affidavits required — penalty for falsification — records.** (1) *The sheriff of a county and undersheriffs and deputy sheriffs located at the county seat, but not elsewhere, shall receive and examine skins and pelts presented for bounty in their respective counties. The sheriff shall receive ten cents (\$.10) for each skin examined, this amount to be paid by the owner of the skin. A sheriff, undersheriff, and deputy sheriff, to prevent fraud, shall carefully examine each skin presented. If the examination discloses that the scalp and ears with the skin from the entire head of the animal have not been severed, punched, patched, or marked, he shall, in the presence of the person presenting the skin, mark the skin by severing the skin from the head, including the ears, and then redeliver the skin to the person presenting it, and shall require an affidavit from the claimant that the claimant killed the animal. The affidavit shall be on forms prescribed by the department, and contain information the department requires. The officer shall require affidavits from two (2) resident taxpayers residing in the vicinity in which the animal was killed, setting forth that they are resident taxpayers on livestock, giving their post-office addresses and stating that they are personally acquainted with the person presenting the skin, and to their knowledge, the person did kill the animal from which the skin was taken within thirty (30) days preceding the offering of the skin for a bounty to the sheriff, undersheriff, or deputy sheriff to which it is presented. The officer shall at the same time make out and deliver to the person a certificate addressed to the county clerk of his county, and immediately deliver to the county clerk a duplicate of the certificate, showing the date, number, and kind of skins marked for severing, and the name of the person presenting the skins. The certificate shall also recite that the filing of the affidavits of taxpayers previously required has been done and the examination has been made as required. The certificate shall be signed by the officer in his official capacity. When a doubt exists as to the kind of skin presented, whether wolf or coyote, the certificate shall be issued for the lesser bounty. Each sheriff shall keep a record of all skins marked and severed, showing the date, number, and kinds and the names of the persons presenting the skins. This record is an official record. The sheriff, undersheriff, or deputy sheriff may not perform any duties under this act except at the county seat.*

(2) *A taxpayer who makes a false certificate or affidavit under this section in a material portion is guilty of a felony, punishable the same as for the crime of perjury. The sheriff shall, not later than the fifteenth of each month, give to the county clerk and recorder a report setting forth*

the names of the persons presenting skins, with the number of the certificate, the kind and number of the skins presented. *The sheriff shall report for each certificate which he has issued during the month.*

(3) The county clerk shall, *on receipt* of each certificate, file the *certificate* in the order in which they are received, and safely keep them until the arrival of the skin or skins mentioned in *the* certificate. *On receipt of the skin or skins* he shall call to his assistance either the county treasurer, or, in his absence, the clerk of the district court, who, *with both* present, in order to prevent fraud, *shall* examine each scalp. *If the examination discloses* that the scalps agree with the number and kind of scalps, or lower jaw of mountain lion, mentioned in the certificate, the county clerk shall, in the presence of *the* treasurer or clerk of the district court, destroy *the* scalps by fire. *The* county clerk shall then make out and deliver to the person named in *that* certificate a second certificate showing the statement of the facts contained in the certificate to the sheriff, undersheriff, or deputy sheriff, with the additional statement of the examination made by him, and that he found *the* scalps to agree with the number and kind mentioned in the certificate of *the* sheriff, undersheriff, or deputy sheriff. In no case *may* a bounty certificate be issued by the county clerk for more scalps than are actually received and counted by him. *The* county clerk shall receive for each scalp, or mountain lion lower jaw *which he accounts for*, the sum of five cents (\$.05), to be paid quarterly by the state treasurer out of the bounty fund. The county clerk shall keep a record of all certificates received and issued, showing the date and description of the number and kind of hides, and the names of the persons presenting the *hides*, and *this record is* an official record. County clerks are required to send a report and statement to the *department* on or before the twentieth of each month."

Section 153. Section 46-1908, R.C.M. 1947, is amended to read as follows:

"46-1908. **Bounty claims and certificates to be filed with department.** *Bounty* claims and certificates issued by the county clerks and recorders under section 46-1907 shall be filed *with the department* and registered in a book provided for that purpose."

Section 154. Section 46-1909, R.C.M. 1947, is amended to read as follows:

"46-1909. **Department to examine claims and certificates — approval or disapproval of claims.** *The department shall* examine and investigate every bounty claim and certificate filed with *the department*. *When it makes the* examination and investigation, the *department* may require the holder of a certificate or claim to furnish the *department* with the additional evidence or proof *about the certificate or claim which the department considers* necessary. The evidence may be either oral or *documented*, as required by the *department*. The *department* shall, after making *the* examination and investigation, endorse on *the* certificate or claim its approval or disapproval of *it*, and if the *certificate or claim* or any part of *it is* disapproved, *the* endorsement shall state the reasons for the disapproval. If a certificate or claim is approved it shall be processed as provided by law."



Section 155. Section 46-1912, R.C.M. 1947, is amended to read as follows:

**"46-1912. Use of funds remaining after payment of bounties — sale of furs, skins and specimens — presentation to museums. (1)** If, at the end of a bounty paying season, there *is* surplus *money* available for the administration of *this act* surplus may be used to hire salaried hunters and trappers to hunt and trap predatory animals and to purchase and supply poison to be used for a poison campaign on predatory animals.

(2) All furs, skins, and specimens taken by hunters or trappers whose salaries *are* paid in whole or in part out of *this money*, shall be sold by the *department*, and the proceeds from *these* sales shall be credited to the earmarked revenue fund. *These funds shall be used to carry out this act. Specimens* may be presented, free of charge, to a state museum or institution."

Section 156. Section 46-1914, R.C.M. 1947, is amended to read as follows:

**"46-1914. Levy of tax for purpose of paying for destruction of wild animals — limitation on levy.** The department of *revenue* shall annually prescribe the levy recommended by the *department* to be made against livestock of all classes, for paying for the destruction of wild animals killed *in this state*. The tax in any one year *may* not exceed one and one-half (1 ½) mills *on* the assessed valuation of *the* livestock. *The money* received shall be used only *for* the payment of claims for the destruction of wild animals and *for* the administration of this act, approved by the *department*. *The money* received for the taxes levied shall be *sent* annually with other taxes for state purposes to the state treasurer by the county treasurer of each county, and when received by the state treasurer shall be placed *in* the earmarked revenue fund, and *the money may then* be paid out on claims approved *under* the law governing the payment of claims."

Section 157. Section 46-2004, R.C.M. 1947, is amended to read as follows:

**"46-2004. Service on department of livestock.** If *the* owner is unknown or if *the* owner is known but his post-office address is unknown, the notice shall be served *on* the *department of livestock*."

Section 158. Section 46-2007, R.C.M. 1947, is amended to read as follows:

**"46-2007. Department to ascertain owner — notice.** *When the notice is served, the department shall* ascertain the owner of *the* stock, if possible, and when the owner is ascertained, immediately furnish the owner with the information contained in *the* notice, and notify the city or town, its officers or agents, of the name and post-office address of *the* owner."

Section 159. Section 46-2401, R.C.M. 1947, is amended to read as follows:

**"46-2401. Licensing of rendering or disposal plants. (1)** It is

unlawful to operate *in this state a rendering or disposal plant or establishment that is intended to be operated for the disposal of bodies or parts of bodies of animals or fowl in any manner, except for human consumption*, without first securing a license from the *department of livestock*.

(2) The license *expires* on December 31 of the year in which it is issued. A license fee of five dollars (\$5) shall be charged for licenses issued under this act.

(3) All license fees collected shall be paid into the general fund of *this state*."

Section 160. Section 46-2402, R.C.M. 1947, is amended to read as follows:

"46-2402. **Power of department to adopt and enforce rules.** The *department may adopt* and enforce rules or orders necessary for the supervision, control, and inspection of rendering or disposal plants or establishments, their standards and methods of operation and their sanitary conditions, and the supervision, control, and inspection of equipment of *the plant*, where *the* rendering or disposal plants or establishments are intended to be operated for the disposal of bodies, or parts of bodies, of dead animals or fowl in any manner, except for human consumption. *Vehicles* and equipment used for the transportation of *these* bodies, or parts of bodies, *are* subject to *the* rules or orders, *adopted* by the *department which are applicable to the vehicles or equipment*. *This act does not* apply to the slaughtering and handling of animals or fowl for human consumption."

Section 161. Section 46-2403, R.C.M. 1947, is amended to read as follows:

"46-2403. **Power of department to restrain operation of rendering plant.** The *department may* restrain the operation of a rendering or disposal plant or establishment engaged in the collection or handling of the bodies, or parts of bodies, of dead animals or fowl, where *the* operation is carried on in violation of the laws of *this state* or the rules or orders of the *department*, after a hearing held on five (5) days written notice of the hearing to the licensee. *The* restraining order may be issued without notice of hearing where, in the discretion of the *department*, the violation constitutes a menace to public health requiring immediate and summary abatement. *The* licensee *may* appeal to the district court, *on* giving written notice of appeal to the restraining authority within ten (10) days after service of the restraining order, whether *the* order is made *on* hearing or summarily. *The* written notice of appeal *does not* stay execution of the restraining order when *the* restraining order is issued without hearing to restrain a menace to public health requiring immediate and summary abatement. Where the restraining order is issued after a hearing, the hearing before the district court *is on* the record, together with any additional evidence *offered*. Where the order is issued without hearing, the hearing before the district court *is on* evidence *offered at the hearing*. Where the appeal is from an order issued after hearing, *the* appellant shall pay the cost of the transcript, which must be filed not more than thirty (30) days from the date of filing *the* notice of appeal; however, the court may extend the time for filing the transcript in its discretion."

Section 162. Section 46-2404, R.C.M. 1947, is amended to read as follows:

**"46-2404. Power of department to revoke license of rendering plant.** *A license to operate a rendering or disposal plant may be revoked at any time by the department when it determines that a person to whom the license is issued has failed to comply with any statute of this state or rules or orders of the department, and on hearing before the department, after ten (10) days written notice. Service and filing of a notice of appeal to a district court stays execution of the order.*"

Section 163. Section 46-2405, R.C.M. 1947, is amended to read as follows:

**"46-2405. Power to administer oaths, subpoena witnesses, and receive evidence.** Hearings held under this act, for either revocation of licenses or to restrain operation, shall be held by the *department, and the department* or its agent *may* administer oaths, subpoena witnesses, and receive evidence in order to carry out this act."

Section 164. Section 46-2406, R.C.M. 1947, is amended to read as follows:

**"46-2406. Penalty for violation.** Operation of a rendering or disposal plant or establishment without a license from the *department*, or operation of a rendering or disposal plant or establishment in violation of a restraining order, or after revocation of a license *constitutes* a misdemeanor, punishable by a fine of not less than fifty dollars (\$50) nor more than two hundred fifty dollars (\$250) for each day of *illegal* operation."

Section 165. Section 46-2407, R.C.M. 1947, is amended to read as follows:

**"46-2407. Dead or fallen animal rendering plants — definitions.** When used in this act:

(1) "Dead or fallen animal" means the carcass or dead body of a cow, ox, bull, stag, calf, steer, heifer, horse, mule, mare, colt, foal or filly, the continued existence of which would create a public nuisance and constitute a hazard to the public health, which is not killed for human consumption, and is to be salvaged for the purpose of obtaining the hide and grease or fat from *the* animal.

(2) "Licensed rendering plant" and "licensed renderer" mean a person, copartnership, association, or corporation which is engaged in the disposal of dead or fallen animals and which is licensed by the *department*."

Section 166. Section 46-2408, R.C.M. 1947, is amended to read as follows:

**"46-2408. Identification tags.** Licensed rendering plants shall provide themselves with serially-numbered metal identification tags of a size and design prescribed by the *department* and in a number series assigned by the *department*."

Section 167. Section 46-2409, R.C.M. 1947, is amended to read as follows:

"46-2409. **Dead or fallen animal records.** When a licensed renderer or his agent receives a dead or fallen animal, he shall present to the person, corporation, or association which has requested him to remove *the* dead or fallen animal, *a* dead or fallen animal record. *The record shall be on forms prescribed by the department and contain information the department may, by rule, require. The report shall be executed in quadruplicate, the original copy shall accompany the carcass and hide until the hide is officially inspected for marks and brands, the duplicate shall be retained by the licensed renderer for the time which the department in its discretion requires, the triplicate shall be filed within seven (7) days after its execution and without cost in the office of the county clerk and recorder of the county in which the animal is received by the licensed renderer or his agent, and the quadruplicate shall be retained by the person, corporation, or association which requested removal of the dead or fallen animal.*"

Section 168. Section 46-2411, R.C.M. 1947, is amended to read as follows:

"46-2411. **Production of dead or fallen animal record on demand — animal not to be removed during transportation — investigation.** A licensed renderer or his agent who has received a dead or fallen animal, *on demand of a livestock inspector, sheriff, undersheriff, deputy sheriff, or other peace officer, shall produce for inspection of the officer, an executed dead or fallen animal record identifying each dead or fallen animal which he is transporting when the demand is made. Failure to produce the executed dead or fallen animal record on demand constitutes a misdemeanor punishable, as provided in this act. Under no circumstances may a licensed renderer or his agent endanger the public health by removing or being required to remove any dead or fallen animals from the vehicle in which they are being transported until the vehicle arrives at a licensed rendering plant where the dead or fallen animal shall be handled and disposed of in conformity with the rules of the department. If a livestock inspector, sheriff, undersheriff, deputy sheriff, or other peace officer has probable cause to believe the dead or fallen animals being transported by a licensed renderer or his agent were obtained by a commission of a felony, he may take the licensed renderer or his agent, as well as the vehicle, into custody and proceed with the licensed renderer or his agent to the rendering plant of the licensed renderer, where inspection of marks and brands and immediate investigation shall be made.*"

Section 169. Section 46-2412, R.C.M. 1947, is amended to read as follows:

"46-2412. **Disposal of hides — inspection — filing of dead or fallen animal record.** When a licensed renderer or his agent disposes of the hides from dead or fallen animals, *the hides shall be handled and inspected for marks and brands in conformity with Title 46, chapter 11. The sheriff, deputy sheriff, person designated by the board of county commissioners, or the department who makes the inspection for marks and brands in conformity with Title 46, chapter 26, shall complete the original dead or fallen animal record which accompanies the hide by inserting his inspector's tag number. He shall file the completed original dead or fallen animal record without cost in the office of the county clerk and recorder,*

together with the duplicate certificate of inspection required to be filed under Title 46, chapter 11."

Section 170. Section 46-2515, R.C.M. 1947, is amended to read as follows:

"46-2515. **Only certain sires to be used for artificial insemination.** (1) All sires used for artificial insemination must be free from brucellosis, vibriosis, trichomoniasis, dourine, posthitis, pullorum disease, other transmissible, infectious, contagious diseases, transmissible hereditary malformations, and other detrimental or undesirable characteristics. Proof of fitness of *these* sires shall be provided to the department by the owner or parties providing *the* sires for artificial insemination.

(2) Semen imported into *this* state *may* not be used by any artificial inseminator until proof is made to the satisfaction of the department that the sire from which *the* semen was taken was free from the above-mentioned diseases."

Section 171. Section 46-2602, R.C.M. 1947, is amended to read as follows:

"46-2602. **Licenses.** (1) *It is* unlawful to handle, prepare, cook, or otherwise treat garbage to feed to swine or other animals, or to feed garbage to swine or other animals, without first securing a license *for that purpose* from the *department of livestock*. One license, issued to the entrepreneur, corporation, or individual responsible for a particular garbage feeding enterprise *covers* all garbage feeders concerned with *the* enterprise. The license provided *for in this section expires* on December 31, of the year in which it is issued. A license fee of five dollars (\$5) shall be charged for all licenses issued under this act. All license fees collected shall be paid into the general fund of *this* state.

(2) This act *does* not apply to a person who feeds only his own household garbage to swine or other animals."

Section 172. Section 46-2603, R.C.M. 1947, is amended to read as follows:

"46-2603. **Applications for licenses.** A person desiring to obtain a license to feed garbage to swine or other animals shall make *a* written application *for the license* to the *department* under the rules or orders prescribed by *the department*."

Section 173. Section 46-2604, R.C.M. 1947, is amended to read as follows:

"46-2604. **Power to adopt rules.** The *department shall administer and enforce* this act, and *may adopt* and enforce rules or orders necessary for the supervision, control, and inspection of persons who handle, prepare, cook, or otherwise treat garbage to feed to swine or other animals or who feed garbage to swine or other animals. *The* rules or orders shall apply to and govern the method of applying for a license, standards and methods of operation, sanitary conditions of premises where garbage is treated for feeding or fed, the control and inspection of equipment used to store, treat, or feed garbage and equipment, including vehicles used for the transportation of garbage."

Section 174. Section 46-2605, R.C.M. 1947, is amended to read as follows:

**"46-2605. Entry of premises for inspection — keeping of records.**

(1) *An authorized representative of the department may enter at reasonable times on private or public property to inspect and investigate conditions relating to the treating of garbage to be fed, or the feeding of garbage, to swine or other animals.*

(2) *An authorized representative of the department may examine records or memoranda pertaining to the treatment or feeding of garbage to swine or other animals. The department may require maintenance of records it considers necessary, relating to the operation of equipment for and procedure of treating or feeding garbage to swine or other animals, and may require copies of the records to be submitted to the department periodically."*

Section 175. Section 46-2606, R.C.M. 1947, is amended to read as follows:

**"46-2606. Power of department and board to restrain operation of garbage feeder.** *The department may restrain the operation of a licensed garbage feeder whose operation is carried on in violation of the laws of this state or the rules or orders of the department, after a hearing held on five (5) days written notice of the hearing to the licensee. The restraining order may be issued without notice of hearing where, in the discretion of the department, the violation constitutes a menace to public or animal health requiring immediate and summary abatement. The licensee may appeal to the district court, on giving written notice of appeal to the restraining authority within ten (10) days after service of the restraining order, whether the order is made on hearing or summarily. The written notice of appeal does not stay execution of the restraining order when the restraining order is issued without hearing to restrain a menace to public health requiring immediate and summary abatement. Where the restraining order is issued after hearing, the hearing before the district court is on the record, together with additional evidence offered. Where the order is issued without hearing, the hearing before the district court shall be upon evidence offered before the court."*

Section 176. Section 46-2607, R.C.M. 1947, is amended to read as follows:

**"46-2607. Power to revoke license of garbage feeder.** *The licenses to feed garbage to swine or other animals may be revoked at any time by the department when it determines that a person to whom the license is issued has failed to comply with the laws of this state, or rules or orders of the department, and on a hearing before the department, after ten (10) days written notice. An appeal to the district court, stays execution of an order of the department revoking a license."*

Section 177. Section 46-2608, R.C.M. 1947, is amended to read as follows:

**"46-2608. Power to administer oaths, subpoena witnesses, and receive evidence.** *The department or its agent may administer oaths, subpoena witnesses, and receive evidence in order to carry out this act."*

Section 178. Section 46-2609, R.C.M. 1947, is amended to read as follows:

**"46-2609. Cooking or other treatment of garbage.** All garbage, regardless of previous processing, shall, before being fed to swine or other animals, be thoroughly heated to at least 212 F. for at least thirty (30) minutes, unless treated in some other manner which is approved in writing by the *department* as being equally effective for the protection of public and animal health."

Section 179. Section 46-2610, R.C.M. 1947, is amended to read as follows:

**"46-2610. Garbage originating on or removed from airplanes may not be treated or fed.** *Garbage* originating on or removed from airplanes landing in this state may not be treated for feeding or be fed to swine or other animals. The powers granted in section 46-2605 to the *department* to enter on private or public property for the purpose of inspecting and investigating conditions relating to the treating of garbage to be fed to swine or other animals or the feeding of garbage to swine or other animals include the inspection and investigation of garbage disposal methods employed at airports and all facilities *at airports* and aircraft."

Section 180. Section 46-2703, R.C.M. 1947, is amended to read as follows:

**"46-2703. Powers and duties of committee.** *The* county livestock protective committee shall advise, assist, and *cooperate* with the *department of livestock*, the board of county commissioners, the sheriff and all other public officials or police officers *who have* duties pertaining to hide and brand inspection, apprehension of livestock rustlers, the prevention of rustling, enforcement of laws governing the movement and sale of livestock, the treatment and prevention of livestock diseases, and other matters *which are* of interest and value to the livestock industry in the county."

Section 181. Section 46-2705, R.C.M. 1947, is amended to read as follows:

**"46-2705. Special livestock deputy — duties — compensation.** *The* county livestock protective committee may recommend to the board of county commissioners the appointment of a special livestock deputy, satisfactory to the *department* and the sheriff, whose duties *are* to assist *the department* and *the* sheriff in the enforcement of hide and brand inspection laws, laws governing the movement and sale of livestock and the treatment and prevention of livestock diseases, laws pertaining to the apprehension of livestock rustlers and the prevention of rustling, and other laws *which are* of particular concern to the livestock industry of the county, particularly as *regards* cattle. *The* special livestock deputy may receive a commission from the *department* and appointment as a deputy from the sheriff of the county, and shall give *the* bond for the faithful performance of his duties as required from officers performing similar duties. *The* special livestock deputy shall receive compensation for his services and for mileage traveled in the performance of his duties in an amount set by the board of county commissioners, *on the* recommenda-

tion of the committee, to be paid from *the* stockmen's special deputy fund and from the county general fund in the proportions set by the board of county commissioners."

Section 182. Section 46-2901, R.C.M. 1947, is amended to read as follows:

"46-2901. **Definitions.** When used in this *chapter*:

(1) "*Person*" means an individual, partnership, corporation, association, or other form of business enterprise;

(2) "*Livestock*" means cattle, sheep, swine, horses, mules, and goats;

(3) "*Livestock dealer*" means *a* person who buys livestock for his own account for purposes of resale or slaughter; or for the account of others; or for or on behalf of any dealer. *The term does not* include a farmer or rancher who buys or sells livestock in the ordinary course of *his* farming or ranching operation; *and*

(4) "*Meat packer*" *means* livestock dealer in this *chapter*."

Section 183. Section 46-2902, R.C.M. 1947, is amended to read as follows:

"46-2902. **Prohibited conduct.** It is unlawful for any person to:

(1) Carry on the business of a livestock dealer without a valid and effective license issued by the *department of livestock* under section 46-2903;

(2) Carry on the business of a livestock dealer without filing and maintaining a valid and effective surety bond *under* section 46-2904;

(3) Carry on the business of a livestock dealer while his current liabilities exceed his current assets; *or*

(4) *Willfully* make or cause to *be made* a false entry or statement of fact in *an* application, financial statement, or report filed with the *department* under this *chapter*."

Section 184. Section 46-2903, R.C.M. 1947, is amended to read as follows:

"46-2903. **Licenses.** (1) A person desiring to be licensed as a livestock dealer shall file annually with the *department of livestock* before July 1, an application for a license to transact business on a form prescribed by the *department*. The application shall contain the following information:

(a) *The* nature of the business to be conducted by the applicant;

(b) *The* name or names of persons applying for *the* license, together with their address and permanent residence;

(c) *The* full name of each member, if the applicant is a firm, association, or partnership or the names of the officers if the applicant is a corporation;

(d) *The* post office and principal place of business of the applicant;



(e) If the applicant is a foreign corporation, its principal place of business, *outside* the state, the name of the state in which it is incorporated, and that it has complied with the laws of this state relating to foreign corporations and its right to do business in this state;

(f) A copy of the financial statement showing current assets and current liabilities, as submitted to the bonding company to secure a bond under this *chapter*.

(2) With the filing of an application for license, the applicant shall submit to the *department* a fee of twenty-five dollars (\$25).

(3) When an applicant has paid the fee, the *department*, except as otherwise provided in this section, shall issue to *the* applicant a license which *entitles* the licensee to engage in the business specified in his application for a period of one (1) year, unless *the* license is suspended, revoked, or terminated *under this chapter*.

(4) A license shall be posted in a conspicuous place in or at the place of business of the licensee for inspection by any person. A licensee under this *chapter* shall be issued a pocket card containing the license number of the applicant and his authority as a livestock dealer and *the* card shall be carried, maintained, and displayed *on demand* as authority as a licensed livestock dealer.

(5) All fees provided for under this *chapter* shall be paid *into* the state treasury, *and* shall be placed by the state treasurer to the credit of the *department*.

(6) A license issued under this *chapter* automatically *terminates* on June 30 following the issuance of the *license*, unless the annual fee has been paid, and *a* license automatically *terminates* upon termination of the surety bond covering the licensed operation."

Section 185. There is a new section to be numbered 46-2903.1, R.C.M. 1947, which reads as follows:

46-2903.1. **Refusal of license.** The department shall refuse to issue or renew a license if the applicant:

(1) Has not filed a surety bond in the form and amount required under section 46-2904;

(2) Has not satisfactorily demonstrated that his current assets exceed his current liabilities;

(3) Has been found by the department to have failed to pay, without reasonable cause, obligations incurred in connection with livestock transactions;

(4) Has violated the livestock laws of this state or of the United States;

(5) Has practiced fraud in connection with the buying or receiving of animals or the selling, exchanging, or negotiating the sale of livestock or the weighing of livestock;

(6) Has failed to keep records of all purchases and sales or refused to grant inspection of the records by the department;

(7) Has been suspended by the order of the secretary of agriculture of the United States department of agriculture under provisions of the Packers and Stockyards Act, 1921, as amended 7 U.S.C. section 181, et seq.; or

(8) Has failed to comply with an order of the livestock department.

Section 186. There is a new section to be numbered 46-2903.2, R.C.M. 1947, which reads as follows:

46-2903.2. **Suspension and revocation of license.** (1) When the department finds that a livestock dealer has violated subsection (2), (3), or (4) of section 46-2902, section 46-2903.1, or section 46-2905, the department may, by order, suspend the license of the offender for a period not to exceed one (1) year. If the violation is repeated, the department may, by order, permanently revoke the license of the offender.

(2) Before a license issued under this chapter may be suspended or revoked, a hearing shall be given the licensee, before the department, to determine whether the license should be suspended or revoked. The licensee shall be given notice of the time and place of the hearing. The hearing shall be held not less than ten (10) days nor more than fifteen (15) days after the mailing of the notice. At the hearing, the department shall take and receive evidence, under oath, with respect to the complaint, and upon the evidence received shall promptly dismiss the proceedings or revoke or suspend the license. On an adverse ruling, the licensee may appeal to the district court in the county where his principal place of business is located.

Section 187. Section 46-2904, R.C.M. 1947, is amended to read as follows:

"46-2904. **Bonds.** (1) A livestock dealer applying for a license under this *chapter* shall file with the *department* and maintain a fully executed duplicate of a valid and effective bond in the form and amount set forth in this section, or if he is registered and bonded under the Packers and Stockyards Act, 1921 (7 U.S.C. section 181 et seq.), *he* shall file a statement in the form prescribed by the *department which shows* he is maintaining a valid and effective bond or its equivalent under *the Packers and Stockyards Act*.

(2) The amount of *the* livestock dealer bond filed with the *department may not be* less than five thousand dollars (\$5,000) or *a larger amount as the department may determine*. The bond shall contain the following conditions:

"*This bond is conditioned on the principal paying when due to the persons entitled thereto the purchase price of all livestock purchased by the principal for his own account or for the accounts of others, and conditioned on the principal safely keeping and properly disbursing all funds, if any, which come into his hands for the purpose of paying for livestock purchased for the accounts of others.*"

(3) Each livestock dealer bond filed with the *department* shall contain provisions that *a person damaged by failure of the principal to comply with the condition clause of the bond may maintain suit to recover on*

the bond, and at least thirty (30) days notice in writing shall be given to the *department* by the party terminating the bond."

Section 188. Section 46-2905, R.C.M. 1947, is amended to read as follows:

"46-2905. **Inspection of records.** A livestock dealer shall keep and maintain records *suitable* to disclose all purchases and sales of livestock. A livestock dealer shall, during all reasonable times, *give the department* access to and *let the department* copy all of *the* records relating to his business."

Section 189. Section 46-2906, R.C.M. 1947, is amended to read as follows:

"46-2906. **Penalties.** A livestock dealer who violates *subsection (1) or (4) of section 46-2902*, is guilty of a misdemeanor."

Section 190. Section 46-2907, R.C.M. 1947, is amended to read as follows:

"46-2907. **Powers and duties of department.** *The department shall enforce this chapter, and adopt rules necessary or desirable to carry out this chapter.*"

Section 191. Section 52-319, R.C.M. 1947, is amended to read as follows:

"52-319. **Notices of security agreements covering livestock, renewals, assignments and satisfactions to be filed by department of livestock — list to be furnished stock inspectors — livestock markets not liable when notice not filed.** *The department of livestock shall accept and file notices of security agreements, renewals, assignments, and satisfactions covering livestock owned by a person, firm, corporation, or association, and bearing his recorded brand, and shall list the notices on the official records of marks and brands kept by it. The department shall also list the notices in the offices of the stock inspectors, employed by the department of livestock and stationed at the central livestock markets where records are kept of marks and brands. All forms on which the notices are given shall be prescribed by the department of livestock and furnished by the secured party, who gives the notice. A livestock market to which livestock is shipped may not be held liable to any secured party for the proceeds of livestock sold through the livestock market by the debtor unless notice of the security agreement is filed as hereinbefore provided.*"

Section 192. Section 52-320, R.C.M. 1947, is amended to read as follows:

"52-320. **Contents of notices.** *The notices shall consist of a statement showing the date of security agreement, the names and addresses of the debtors and secured parties, or holders and owners thereof, a description of the livestock covered by the security agreement, and in case of notice of renewal, the notice shall state the date of renewal and in the case of a notice of assignment of a security interest, the notice shall state the date of the assignment, and a description of the security agreement to*

which *the* assignment is made and the parties to the assignment, and *any* additional information *which* is required by the *department of livestock*."

Section 193. Section 52-321, R.C.M. 1947, is amended to read as follows:

"52-321. **Duty of secured parties to file satisfactions of security agreements.** *The secured parties, who filed notices of security agreements, renewals, and assignments, with the department of livestock, as provided for in this chapter, shall file notices of satisfaction of the security agreements with the department of livestock immediately upon the satisfaction of the security agreement.*"

Section 194. Section 52-322, R.C.M. 1947, is amended to read as follows:

"52-322. **Fees — disposal of.** *The department of livestock shall charge for filing and listing the notices of security agreements two dollars (\$2) for each recorded brand listed in each security agreement, and for filing and listing each notice of satisfaction, renewal, or assignment of the security agreement, two dollars (\$2) for each recorded brand listed. All fees shall be paid into the earmarked revenue fund for the use of the department of livestock.*"

Section 195. Section 52-323, R.C.M. 1947, is amended to read as follows:

"52-323. **Department of livestock not responsible for collection or payment of money under security agreements.** *The department of livestock, its agents and employees, are not responsible or liable to either debtor or secured party for the collection or payment of any money due the holder of any security agreement covering livestock, or renewals, satisfactions, or assignments thereof as provided in this act, if this act is carried out in good faith.*"

Section 196. Section 67-205, R.C.M. 1947, is amended to read as follows:

"67-205. **Brands — recording — fees.** *An owner or prospective owner of animals in restraint or captivity is entitled, by written subscribed statement, to adopt distinctive brands or tattoo marks, not including arabic numerals and not already in known use by others, for any of the animals and to have the distinctive brands and tattoo marks recorded in his name in the office of the department of livestock, on paying a recording fee of four dollars (\$4) for each brand and for each tattoo mark. The statements shall be recorded in a suitable book to be kept for that purpose by the department of livestock. The presence of the recorded brand or recorded tattoo marks on an animal is prima-facie evidence of the ownership of the animal in the person, association, or corporation in whose name the brand or tattoo mark is recorded, subject always to the right to make a transfer of title, right, or interest in, or lien on the animal.*"

Section 197. There is a new section to be numbered 82A-1301.1, R.C.M. 1947, which reads as follows:

82A-1301.1. **Functions of department.** The department and its units

are responsible for administering laws pertaining to livestock, including, but not limited to, laws pertaining to:

- (1) Eggs and egg dealers (Title 3, chapter 23);
- (2) Dairies and dairy products (Title 3, chapter 24);
- (3) Montana quality label (Title 3, chapter 25);
- (4) Control of rodents (Title 3, chapter 27);
- (5) Dairy cattle and slaughterhouses (Title 27, chapter 1);
- (6) Preventing, controlling, and eradicating diseases of animals (Title 46, chapter 2);
- (7) Tuberculin regulation (Title 46, chapter 3);
- (8) Butchers and meat peddlers (Title 46, chapter 5);
- (9) Brands (Title 46, chapter 6);
- (10) Livestock inspectors (Title 46, chapter 7);
- (11) Inspection of livestock (Title 46, chapter 8);
- (12) Livestock markets (Title 46, chapter 9);
- (13) Estrays (Title 46, chapter 10);
- (14) Hide dealers (Title 46, chapter 11);
- (15) Livestock improvement (Title 46, chapter 12);
- (16) Fences (Title 46, chapter 14);
- (17) Bounties (Title 46, chapter 19);
- (18) Impounding livestock (Title 46, chapter 20);
- (19) Rendering plants (Title 46, chapter 24);
- (20) Artificial insemination (Title 46, chapter 25);
- (21) Feeding garbage to animals (Title 46, chapter 26);
- (22) Livestock protection (Title 46, chapter 27);
- (23) Livestock dealers (Title 46, chapter 29).

Section 198. Section 82A-1303, R.C.M. 1947, is amended to read as follows:

"82A-1303. **Board of livestock — composition.** (1) *There is a board of livestock.*

(2) The board consists of six (6) members appointed by the governor with the consent of the senate. A member shall be a resident of this state and the owner of cattle, sheep, or horses in this state. An appointee is vested with all the powers and duties of his office before being confirmed by the senate, as are directors in section 82A-106(2).

(3) The governor shall designate the chairman of the board.

(4) *A member shall serve for a term of six (6) years.*

(5) Members of the board shall be reimbursed and compensated as are members of quasi-judicial boards in section 82A-112(1)(e)."

Section 199. Section 94-35-172, R.C.M. 1947, is amended to read as follows:

"94-35-172. **Sale of diseased carcasses without inspection forbidden.** It is unlawful for a person to sell or offer for sale the carcass or any part of the carcass of an animal having actinomycosis (big jaw), tuberculosis, or any other infectious or contagious disease unless *it has* been inspected and passed by a representative of the *department of* livestock or the United States *department of* agriculture."

Section 200. Section 94-35-205, R.C.M. 1947, is amended to read as follows:

"94-35-205. **Stolen livestock — seizure and confiscating of vehicle used to transport — payment of prior liens and disposal of proceeds.** The officer making the sale, after deducting the expenses of keeping the property and the cost of the sale, so far as the balance of sale proceeds permit, shall pay all liens, according to their priorities, which are established, by intervention or otherwise in *the* proceedings, as being bona fide and as having been created without the lienor having any notice or reasonable cause to believe that the vehicle was being or was to be used for *the* illegal transportation, and shall pay the balance of the proceeds to the treasurer of *this* state to be credited to the *department of* livestock fund."

Section 201. Sections 3-24-133, 27-106, 46-101 through 46-103, 46-107, 46-201, 46-205, 46-401 through 46-415, 46-610, 46-805, 46-807, 46-1702, 46-2908, 82-2301, 82A-1302, 82A-1304, 82A-1305 are repealed.

Approved March 26, 1974

## CHAPTER NO. 311

### AN ACT PROVIDING FOR THE ADMINISTRATION OF AN EMERGENCY MEDICAL SERVICES PROGRAM BY THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is a new section to be numbered 69-7001, R.C.M. 1947, which reads as follows:

69-7001. **Declaration of policy and purpose.** The public welfare requires the providing of assistance and encouragement for the development of a comprehensive emergency medical services program for Montanans who each year are dying and suffering permanent disabilities needlessly because of inadequate emergency medical services. The repeated loss of persons who die unnecessarily because necessary life support personnel and equipment are not available to victims of accidents

and sudden illness is a tragedy that can and must be eliminated. The development of an emergency medical services program is in the interest of the social well-being and health and safety of the state and all its people.

Section 2. There is a new section to be numbered 69-7002, R.C.M. 1947, which reads as follows:

**69-7002. Emergency medical services program — duties of department.** The department of health and environmental sciences shall establish and administer an emergency medical services program. The department is authorized to confer and cooperate with any and all other persons, organizations and governmental agencies that have an interest in emergency medical services problems and needs, and the department is authorized to accept, receive, expend and administer any and all funds which are now available or which may be donated, granted or appropriated to the department of health and environmental sciences. The department of health and environmental sciences and the department of inter-governmental relations, highway safety division and other interested departments or divisions, shall develop in writing a mutually agreeable plan of cooperation, so that governmental effort will not be duplicated and governmental resources will be applied on a reasonable priority basis.

Approved March 26, 1974

## CHAPTER NO. 312

AN ACT TO REDEFINE THE CIRCUMSTANCES UNDER WHICH A MINOR MAY VALIDLY CONSENT TO RECEIVE MEDICAL OR SURGICAL CARE, AND TO AMEND SECTIONS 69-6101, 69-6102, 69-6103, 69-6104, AND 69-6105, R.C.M. 1947.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 69-6101, R.C.M. 1947, is amended to read as follows:

**"69-6101. Consent of minor for health services — when valid.** The consent to the provision of medical or surgical care or services by a hospital, public clinic, or the performance of medical or surgical care or services by a physician, licensed to practice medicine in this state *may be given by a minor who professes or is found to meet any of the following descriptions:*

(1) *A minor who is or was ever married, or has had a child, or graduated from high school, or is emancipated; or*

(2) *A minor who has been separated from his parent, parents, or legal guardian for whatever reason and is supporting himself by whatever means; or*

(3) *A minor who professes or is found to be pregnant, or afflicted with*

*any reportable communicable disease including venereal disease, or drug and substance abuse including alcohol. This self-consent only applies to the prevention, diagnosis, and treatment of those conditions specified in this subsection. The self-consent in the case of pregnancy, venereal disease, and drug and substance abuse also obliges the health professional, if he accepts the responsibility for treatment, to counsel the minor by himself or by referral to another health professional for counseling; or*

*(4) A minor who needs emergency care, including transfusions, without which his health will be jeopardized. The parent, parents, or legal guardian shall be informed as soon as practical except in conditions mentioned in subsections (1), (2), (3), or (4) of this section; or*

*(5) A minor who has had a child may give effective consent to health service for his child; or*

*(6) A minor may give consent for health care for his spouse if his spouse is unable to give consent by reason of physical or mental incapacity."*

Section 2. Section 69-6102, R.C.M. 1947, is amended to read as follows:

**"69-6102. Divulgence of information by physician.** (1) A treating physician or other health professional, may, but shall not be obligated to, inform the spouse, parent, custodian or guardian of any such minor in the circumstances as enumerated in section 69-6101, of any treatment given or needed when:

*(a) in the judgment of the health professional severe complications are present or anticipated; or*

*(b) major surgery or prolonged hospitalization is needed; or*

*(c) failure to inform the parent, parents, or legal guardian would seriously jeopardize the safety and health of the minor patient, younger siblings, or the public; or*

*(d) to inform them would benefit the minor's physical and mental health and family harmony; or*

*(e) the hospital desires a third party commitment to pay for services rendered or to be rendered.*

*(2) Notification or disclosure to the spouse, parent, parents, or legal guardian by the health professional shall not constitute libel or slander, a violation of the right of privacy, a violation of the rule of privileged communication or any other legal basis of liability. When the minor is found not to be pregnant, or not afflicted with venereal disease, or not suffering from a drug or substance abuse, including alcohol, then no information with respect to any appointment, examination, test, or other health procedure shall be given to the parent, parents, or legal guardian, if they have not been already informed as permitted in this act, without the consent of the minor."*

Section 3. Section 69-6103, R.C.M. 1947, is amended to read as follows:



**"69-6103. Financial responsibility of a consenting minor.** *Consent of the minor shall not be subject to later disaffirmance or revocation because of minority. The spouse, parent, parents, or legal guardian of a consenting minor shall not be liable for payment for such service unless the spouse, parent, parents, or legal guardian have expressly agreed to pay for such care. The minor so consenting for such health services shall thereby assume financial responsibility for the cost of said services except those who are proven unable to pay and who receive the services in public institutions. If the minor is covered by health insurance, payment may be applied for services rendered."*

Section 4. Section 69-6104, R.C.M. 1947, is amended to read as follows:

**"69-6104. Emergencies and special situations when consent requirements differ.** *(1) Any health professional may render or attempt to render emergency service or first aid, medical, surgical, dental, or psychiatric treatment without compensation to any injured person or any person regardless of age who is in need of immediate health care when, in good faith, the professional believes that the giving of aid is the only alternative to probable death or serious physical or mental damage.*

*(2) Any health professional may render nonemergency services to minors for conditions which will endanger the health or life of the minor if services would be delayed by obtaining consent from spouse, parent, parents, or legal guardian.*

*(3) No consent shall be required of any minor who does not possess the mental capacity or who has a physical disability which renders him incapable of giving his consent and who has no known relatives or legal guardians if a physician determines the health service should be given.*

*(4) Self-consent of minors shall not apply to sterilization or abortion."*

Section 5. Section 69-6105, R.C.M. 1947, is amended to read as follows:

**"69-6105. Immunity and responsibility of hospital, public clinic or physician.** *(1) No physician, surgeon, dentist, health or mental health care facility may be compelled to treat a minor on his own consent against their best judgment.*

*(2) Nothing contained in this section shall be construed to relieve any physician, surgeon, dentist, health or mental health care facility from liability for negligence in the diagnosis and treatment rendered such minor."*

Section 6. There is a new section to be numbered 69-6105.1, R.C.M. 1947, which reads as follows:

**69-6105.1. Health professional defined.** Health professional as used in this act shall include only those persons licensed in Montana as physicians, psychiatrists, psychologists or dentists.

Approved March 26, 1974

## CHAPTER NO. 313

AN ACT TO AMEND SECTIONS 59-1609 AND 59-1610, R.C.M. 1947

RECOGNIZING COLLECTIVE BARGAINING RIGHTS IN THE  
PROFESSIONAL EDUCATIONAL EMPLOYEES OF THE UNIVER-  
SITY SYSTEM AND COMMUNITY COLLEGES.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is a new section to be numbered 59-1608.1, R.C.M. 1947, which reads as follows:

59-1608.1. **Declaration of policy.** Since joint decision making is the long-accepted manner of governing institutions of higher learning, the legislature declares that it is public policy to encourage that process by authorizing collective bargaining as one part of the decision making process for the institutions between the professional educational employees and the bargaining units of the university system and community colleges. The legislature recognizes that professional employees possess knowledge, expertise, and dedication which is helpful and necessary to the operation and quality of the institutions and of assistance to the administration in developing policies.

Section 2. There is a new section to be numbered 59-1608.2, R.C.M. 1947, which reads as follows:

59-1608.2. **Professional instructors and teachers defined as public employees.** Under this act collective bargaining shall be carried out in accordance with the provisions of Title 59, chapter 16, R.C.M. 1947, provided however, the provisions in section 59-1602 (2) excepting professional instructors and teachers from the definition of public employee do not apply for the purposes of this act.

Section 3. Section 59-1609, R.C.M. 1947, is amended to read as follows:

"59-1609. **Representative of public employer.** The chief executive officer of the state or political subdivision or chairman of the county commissioners, *or commissioner of higher education*, whether elected or appointed, or his designated authorized representative shall represent the public employer in collective bargaining with an exclusive representative."

Section 4. Section 59-1610, R.C.M. 1947, is amended to read as follows:

"59-1610. **Execution of agreement — arbitration procedure — effect of agreement.** (1) Any agreement reached by the public employer and the exclusive representative shall be reduced to writing and shall be executed by both parties.

(2) An agreement may contain a grievance procedure culminating in final and binding arbitration of unresolved grievances and disputed interpretations of agreements.

(3) An agreement between the public employer and a labor organization shall be valid and enforced under its terms when entered into in accordance with the provisions of this act and signed by the chief execu-

tive officer of the state or political subdivision *or commissioner of higher education*, or his representative. A publication of the agreement is not required to make it effective. The procedure for the making of an agreement between the state or political subdivision and a labor organization provided by this act is the exclusive method of making a valid agreement for public employees represented by a labor organization."

Approved March 26, 1974

## CHAPTER NO. 314

AN ACT CREATING A BOARD OF SANITARIANS; REGULATING AND LICENSING SANITARIANS; PROVIDING A PENALTY; AND REPEALING SECTION 69-3401 THROUGH 69-3409, R.C.M. 1947.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is a new section to be numbered 69-3410, R.C.M. 1947, which reads as follows:

69-3410. **Definitions.** Unless the context requires otherwise, as used in this act:

(1) "Board" means the board of sanitarians provided for in section 3 [69-3412].

(2) "Department" means the department of professional and occupational licensing provided for in title 82A, chapter 16.

(3) "Registered sanitarian" means a sanitarian licensed under this act.

(4) "Sanitarian", within the meaning and intent of this act, shall mean a person who, by reason of his special knowledge of the physical, biological and chemical sciences, and the principles and methods of public health, acquired by professional education and practical experience through inspectional, educational and/or enforcement duties, is qualified to practice the profession of sanitarian.

(5) "Practice the profession of sanitarian" means planning, inspectional, educational or enforcement duties in the field of environmental sanitation.

(6) Persons exempt from the requirements of this act, unless practicing the profession of sanitarian are:

(a) any person teaching, lecturing or engaging in research in environmental sanitation but only in so far as such activities are performed as part of an academic position in a college or university;

(b) any person who is a sanitary engineer, public health engineer, registered professional engineer, or engineer in training;

(c) any public health officer employed pursuant to section 69-4509, R.C.M. 1947, and

(d) any person employed by a federal governmental agency but only at such times as the person is carrying out the functions of his employment.

Section 2. There is a new section to be numbered 69-3411, R.C.M. 1947, which reads as follows:

69-3411. **Sanitarians — must be licensed.** A person may not practice the profession of a sanitarian or hold himself out to be a sanitarian unless he is licensed under this act.

Section 3. There is a new section to be numbered 69-3412, R.C.M. 1947, which reads as follows:

69-3412. **Board of sanitarians — creation — members.** (1) There is a board of sanitarians.

(2) The board shall consist of three (3) members appointed by the governor. Each member shall be a resident of this state and a registered sanitarian. Each member shall have a minimum of three (3) years of experience practicing as a sanitarian in the state of Montana.

Section 4. There is a new section to be numbered 69-3413, R.C.M. 1947, which reads as follows:

69-3413. **Terms of members.** Members of the first board shall serve for one (1), two (2), or three (3) years as designated by the governor. After initial appointments, appointed members shall serve for three (3) year terms. One (1) term shall expire on July 1 of each year.

Section 5. There is a new section to be numbered 69-3414, R.C.M. 1947, which reads as follows:

69-3414. **Compensation of members.** (1) Members of the board shall receive compensation of twenty-five dollars (\$25) per day plus actual and necessary expenses and mileage as provided in section 59-801 while engaged in business of the board.

(2) The board shall appoint one (1) of its members chairman. The board shall meet at least once annually and at such other times as agreed upon. The board shall not meet more than four (4) times in any year.

Section 6. There is a new section to be numbered 69-3415, R.C.M. 1947, which reads as follows:

69-3415. **Application for license — procedure — examination.** (1) A person wishing to practice the profession of sanitarian may apply to the department for registration on a form prescribed by the board.

(2) An applicant must meet minimum standards set by the board and must pass an examination given at a time and place set by the board, but not to exceed one (1) year past the date of issuance of the probationary certificate described in the subsection (3) below.

(3) Upon application for registration and payment of the registration fee, a probationary certificate shall be issued.

(4) If the applicant meets the board's standards and passes the exami-

nation prescribed by the board, the department shall issue a certificate of registration upon payment of the required fee. Holders of current certificates shall be entitled to append to their name the initials "R.S."

Section 7. There is a new section to be numbered 69-3416, R.C.M. 1947, which reads as follows:

69-3416. **License fees.** (1) An applicant for a license shall pay a fee of thirty-five dollars (\$35).

(2) A registered sanitarian may renew his license by paying an annual fee set by the board, not to exceed ten dollars (\$10).

(3) Renewal fees are due July 1 of the renewal year. If the renewal fee is not paid the license expires. Licenses which have lapsed for failure to pay renewal fees may be reissued under rules adopted by the board.

Section 8. There is a new section to be numbered 69-3417, R.C.M. 1947, which reads as follows:

69-3417. **Fees — to earmarked revenue fund.** All fees collected by the department shall be deposited in the earmarked revenue fund for the use of the board subject to section 82A-1603 (6).

Section 9. There is a new section to be numbered 69-3418, R.C.M. 1947, which reads as follows:

69-3418. **Adoption of rules — suspension of license.** (1) The board may adopt rules consistent with this act for its administration.

(2) The board may suspend or revoke a license for the following reasons:

- (a) unprofessional conduct;
- (b) fraud and deceit in obtaining a license;
- (c) gross negligence, incompetency or misconduct in the practice as a sanitarian; or
- (d) on the conviction of a crime involving moral turpitude.

(3) The board's rule making and hearing functions shall be in accordance with the Montana Administrative Procedure Act.

Section 10. There is a new section to be numbered 69-3419, R.C.M. 1947, which reads as follows:

69-3419. **Licensing of other sanitarians.** The department shall issue a license without examination to a person who applies to the department, pays a fee of thirty-five dollars (\$35) and submits satisfactory proof to the board that:

- (1) he is of good moral character; and
- (2) he is registered or licensed as a sanitarian in a state which has requirements comparable to those in this state.

Section 11. There is a new section to be numbered 69-3420, R.C.M. 1947, which reads as follows:

69-3420. **Penalty.** A person who offers his services as a sanitarian, or uses, assumes, or advertises in any way, any title, or description tending to convey the impression that he is a sanatarian, who does not hold the license specified by this act is guilty of a misdemeanor and is punishable by a fine not to exceed five hundred dollars (\$500), or imprisonment for not longer than six (6) months, or both.

Section 12. There is a new section to be numbered 69-3421, R.C.M. 1947, which reads as follows:

69-3421. **Prior registration as sanitarian still valid.** All persons previously registered under sections 69-3401 through 69-3409 are registered sanitarians for purposes of this act.

Section 13. There is a new section to be numbered 69-3422, R.C.M. 1947, which reads as follows:

69-3422. **Sanitarian practicing before act — how licensed.** All persons having practiced as a sanitarian defined by section 1 (5) [69-3410(5)] of this act for one (1) year prior to the effective date of this act may be registered as sanitarians upon making application and payment of the required fee.

Section 14. There is a new section to be numbered 69-3423, R.C.M. 1947, which reads as follows:

69-3423. **Board of health and environmental sciences — rules and orders remain in effect.** All rules and orders adopted by the board of health and environmental sciences under section 69-3402 remain in effect until amended or repealed by the board of sanitarians.

Section 15. Sections 69-3401, 69-3402, 69-3403, 69-3404, 69-3405, 69-3406, 69-3407, 69-3408, and 69-3409 are repealed.

Approved March 26, 1974

## CHAPTER NO. 315

### AN ACT FOR REVISION OF THE LAWS RELATING TO THE DEPARTMENT OF PUBLIC SERVICE REGULATION.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 8-101, R.C.M. 1947, is amended to read as follows:

"8-101. **Definition of terms.** Unless the context *requires otherwise*, in this act:

(1) "*Commission*" or "*board*" means the *public service commission provided for in section 82A-1702.*

(2) "*Corporation*" means a corporation, company, association or joint-stock association.

(3) "*Person*" means an individual, firm, or copartnership.

(4) "*Certificate*" means the certificate of public convenience and necessity issued under this act.

(5) "*Public highway*" means a public street, road, highway, or way in this state.

(6) "*Motor vehicle*" includes vehicles or machines, motor trucks, tractors or other self-propelled vehicles used for the transportation of property or persons over the public highways of the state, and any trailer, semi-trailer, dollie or other vehicle drawn thereby.

(7) "*Between fixed termini or over a regular route*" means the termini or route between or over which a motor carrier usually or ordinarily operates motor vehicles, even though there may be periodical or irregular departures from the termini or route. Whether or not a motor vehicle is operated by a motor carrier between fixed termini, or over a regular route, or otherwise, under this act, is a question of fact to be determined by the commission.

(8) "*Motor carrier*" means a person or corporation, their lessees, trustees, or receivers, appointed by any court, operating motor vehicles upon any public highway in this state for the transportation of persons or property for hire, on a commercial basis either as a common carrier or under private contract, agreement, charter, or undertaking. However, this act does not affect motor vehicles used in carrying property consisting of agricultural commodities (not including manufactured products thereof), if the motor vehicles are not used in carrying other property or passengers for compensation; the operation of school buses which are used in conveying pupils or other students enrolled in classes to and from district or other schools, or in transportation movements related to school activities which are sponsored or supervised by school authorities, the transportation by means of motor vehicles in the regular course of business of employees, supplies, and materials by a person, firm, or corporation engaged exclusively in the construction or maintenance of highways, or engaged exclusively in logging or mining operations, in so far as the use of employees, supplies, and materials in construction and production is concerned; the transportation of property by motor vehicle in a city, town, or village with a population, according to the latest United States census, of less than five hundred (500) persons, or in the commercial areas thereof as determined by the commission; the transportation of newspapers, newspaper supplements, periodicals or magazines; tow trucks and wreckers designed and exclusively used in towing abandoned, wrecked, or disabled vehicles or while these tow trucks and wreckers are rendering assistance to abandoned, wrecked, or disabled vehicles; or ambulances.

(9) "*For hire*" means for remuneration of any kind, paid or promised, either directly or indirectly, or received or obtained through leasing, brokering, or buy-and-sell arrangements from which a remuneration is obtained or derived for transportation service. An accommodative transportation movement by a person not in the transportation business is not a service for hire, even though the persons owning the property transported or persons transported share in the cost or pay for the movement. This act does not prevent bona fide leases, brokerage agreements, or buy-and-sell agreements.

(10) "*Compensation*" means the charge imposed on motor carriers for the use of the highways in this state by motor carriers, under section 8-116.

(11) "*Railroad*" means the movement of cars on rails, regardless of the motive power used."

Section 2. Section 8-101.2, R.C.M. 1947, is amended to read as follows:

**"8-101.2. Certificate required for commercial transportation of livestock.** A person, firm, corporation, association or its or their officers, agents, employees, or servants, *may not* operate any motor vehicle or combination of vehicles in the commercial transportation of livestock for hire, without having first obtained a class B certificate of public convenience and necessity from the *commission*. Provided, however, any commercial transportation movement of livestock in any motor vehicle having a cargo bed of twenty-two (22) feet in length or less, shall be deemed exempt from the provisions of this act."

Section 3. Section 8-111, R.C.M. 1947, is amended to read as follows:

**"8-111. Hearing to consider applications — notice — matters considered — manner of conducting hearings.** (1) Upon the filing of such application by a class A or class B or class C motor carrier, except a class C motor carrier authorized to operate under the terms of a United States government contract, agency or department thereof, the *commission* shall fix a time and place for hearing thereon, which shall not be less than ten (10) days after the filing. The *commission* shall cause a copy of the petition and notice of hearing thereon to be served upon an officer or owner of any motor carrier that in the opinion of the *commission* might be affected by the granting of any such certificate and upon any railroad company operating into or through any town or city located on the proposed route of the applicant, and upon the *department of highways*, at least ten (10) days before the date of hearing, and any such motor carrier or railroad company, and the *department of highways*, and the governing board or boards of any such county, town, or city into or through which the route or service as proposed may extend, and any person or corporation concerned are hereby declared to be interested parties to the proceedings, and may offer testimony for or against the granting of the certificate. The submission of a class C motor carrier application must be accompanied by the names and addresses of any person, firm, corporation or other legal entity with whom the applicant has executed a contract for the distribution, delivery or collection of wares, merchandise or commodities, or transporting persons. Such contracts must be in writing, executed by the parties and submitted to this commission for examination. The contracting parties must appear and offer testimony in support of the applicant. If after hearing upon application for a certificate, the *commission finds*, from the evidence, that public convenience and necessity require the authorization of the service proposed, or any part thereof as the *commission* shall determine, a certificate therefor shall be issued. In determining whether a certificate should be issued, the *commission* shall give reasonable consideration to the transportation service being furnished or that will be furnished by any railroad, or other existing transportation agency, and shall give due consideration to the likelihood of the proposed service



being permanent and continuous throughout twelve (12) months of the year and the effect which *the* proposed transportation service may have upon other forms of transportation service which are essential and indispensable to the communities to be affected by such proposed transportation service or that might be affected thereby. *However* an application by a class A or a class B or a class C motor carrier for a certificate may be disallowed without a public hearing thereon when it appears from the records of the *commission* that the route or territory sought to be served by the applicant has previously been made the basis of a public investigation and finding by the *commission* that public convenience and necessity do not require *the* proposed motor carrier service unless it is made to affirmatively appear in the application by a recital of the facts that conditions obtaining over *the* route or in *the* territory and affecting transportation facilities therein have materially changed since said public investigation and finding and that public convenience and necessity do now require *the* motor carrier operation.

(2) Any investigation, inquiry or hearing which the *commission* has power to undertake or to hold, under the provisions of this act, may be undertaken or held by or before any member of the *commission*, or by and before any agent or examiner of the *commission* designated for the purpose by the *commission*, and every finding, order, or decision made by a member of the *commission*, or agent or examiner of the *commission* so designated, together with a statement in writing of the reasons therefor which statement must be included in *the* finding, or order or decision, pursuant to *the* investigation, inquiry or hearing, when approved and confirmed by the *commission* and ordered filed in its office, shall be *considered* the finding, order, or decision of the *commission*. An agent or examiner of the *commission* designated as aforesaid, may administer oaths, examine witnesses, and receive evidence."

Section 4. Section 8-126, R.C.M. 1947, is amended to read as follows:

"8-126. **Fees required for filing various documents.** (1) The public service commission shall, except as otherwise provided by law, require and receive fees before filing annual reports, tariffs, schedules, and supplements of *these* and shall require and receive fees for copies of orders, documents, classifications, blank forms, and other instruments prepared by it or on file in *its* office, *unless* provided by law to be furnished free of charge, *under* the following schedule:

- (a) Filing annual reports, each .....\$ 5.00
- (b) Filing tariffs, time schedules and supplements thereto, each....2.00
- (c) For issuing certificates of public convenience and necessity to motor carriers, each..... 2.00
- (d) Classification for public utilities, each..... 1.50
- (e) Classification for motor carriers, each ..... .50
- (f) For a copy of *the* rules for motor carriers and blank forms of annual reports for utilities and common carriers ..... Cost

(2) *This section does not* require or authorize the public service

commission to collect fees for the filing of annual reports, tariffs, schedules, and supplements *of these* which relate solely to interstate commerce."

Section 5. There is a new section to be numbered 8-201.1, R.C.M. 1947, which reads as follows:

8-201.1. **Commission defined.** Unless the context requires otherwise, in this chapter "commission" means the public service commission, provided for in section 82A-1702.

Section 6. Section 11-3332, R.C.M. 1947, is amended to read as follows:

"11-3332. **Repealing clause and exception.** *This act does not repeal or modify sections 70-101 through 70-135, as amended, or section 70-301, and this act does not curtail or impair the power or authority of the public service commission and any order made, action taken, or regulation provided by the commission shall supersede and nullify any order, regulation, ordinance or other action authorized by this act in conflict with any such order, regulation, or action, of said public service commission. However, the annual report relating to the operation of a public utility owned by a municipality operating under this act, to be made to the public service commission, shall conform to the fiscal year of the city or town as established by this act.*"

Section 7. Section 70-111, R.C.M. 1947, is amended to read as follows:

"70-111. **Records and reports of commission.** *The reports, records, accounts, files, papers, and memoranda of every nature in the possession of the public service commission are open to the public at reasonable times, subject to the exception that when the commission considers it necessary, in the interest of the public, it may withhold from the public any facts or information in its possession for a period of not more than ninety (90) days after the acquisition of the facts or information.*"

Section 8. Section 70-626, R.C.M. 1947, is amended to read as follows:

"70-626. **Conversion costs.** In determining the conversion costs included in the cost and feasibility report required by section 70-607, the public utility is entitled to amounts sufficient to repay them for the following, as computed and reflected by the uniform system of accounts approved by the public service commission, federal communications commission, or federal power commission, or if the public utility is not subject to regulation by any of the above governmental agencies, by the public utility's system of accounts then in use and in accordance with standard accounting procedures of the public utility.

1. The original costs less depreciation taken of the existing overhead electric and communication facilities to be removed.

2. The estimated costs of removing the overhead electric and communication facilities, less the salvage value of the facilities removed.

3. If the estimated cost of constructing new underground facilities exceeds the estimated cost of constructing new aerial facilities, then the cost difference between the two.

4. The cost of obtaining new easements when technical considerations make it reasonably necessary to utilize easements for the underground facilities different from those used for above ground facilities, or where the pre-existing easements are insufficient for the underground facilities."

Section 9. Section 72-101, R.C.M. 1947, is amended to read as follows:

"72-101. **Creation of commission.** *The public service commission consists of three members who shall be qualified electors of the state. The commissioners when elected qualify at the time and in the manner provided by law for other state officers, and shall take office on the first Monday of January after their election. Each of the members of the commission shall serve for six (6) years, and until his successor is elected and qualified. Biennially, at the general election, one (1) member shall be elected for a period of six (6) years, and until his successor is elected and qualified, to succeed the member of the commission whose term expires on the first day of January following. Any vacancy occurring in the commission shall be filled by appointment by the governor, and such appointee shall hold office until the next general election, and until his successor is elected and qualified. At the biennial election following the occurrence of any vacancy in the commission, there shall be elected one (1) member to fill out the unexpired term for which such vacancy exists. No person in the employ of, or holding any official relations to any railroad, or owning any stocks, bonds, or other securities of any railroad, or who is or shall become in any manner pecuniarily interested in any railroad, or in any stocks, bonds, or other securities thereof, shall be a member of the commission. Any member of the commission who, after his election or appointment to office, or after his induction into office, becomes an employee of or holder of any official relation to any railroad, or who becomes an owner or holder of any stocks, bonds, or other securities of any railroad, or has or acquires any pecuniary interest in any stocks, bonds, or other securities of any railroad, shall forfeit his office, and the governor shall appoint a successor thereto as herein provided in case of a vacancy in the commission. No commissioner shall participate in any hearing or proceeding in which he has any pecuniary interest.*"

Section 10. Section 72-103, R.C.M. 1947, is amended to read as follows:

"72-103. **Meetings of commission — quorum — powers.** *The commission shall hold sessions at times and places in this state as may be expedient. A majority of the commission constitutes a quorum for the transaction of business. The members of the commission may administer oaths and affirmations. The commission may adopt rules to govern its proceedings, and to regulate the mode and manner of all investigations and hearings concerning railroad companies and other parties before it, in the establishment of rates, orders, charges, and other acts required of it under the law.*"

Section 11. Section 72-107, R.C.M. 1947, is amended to read as follows:

"72-107. **Expenses of commissioners and employees.** *Commissioners and the persons in their official employ, when traveling in the*

performance of their official duties, shall have a right to free transportation, and to have their actual and necessary traveling expenses paid."

Section 12. Section 72-114, R.C.M. 1947, is renumbered section 72-101.1, and is amended to read as follows:

"72-101.1. **Definitions and terms.** (1) *This act applies to the transportation of passengers and property between points in this state, and to the receiving, switching, delivering, storing, and handling of property, and to charges connected therewith, and applies to railroad companies, express companies, car companies, sleeping-car companies, freight and freight-line companies, and to any shipments of property made from one point in this state to another point in this state, whether the transportation of it is wholly in this state, or partly in this state and partly in an adjoining state or states.* (2) *Unless the context requires otherwise, in Title 72: (a) "Transportation" includes instrumentalities of shipment or carriage. (b) "Railroad" means a corporation, company, or individual owning or operating a railroad, in whole or in part, in this state. The term also includes express companies and sleeping-car companies. (c) "Commission" or "board" means the public service commission, provided for in section 82A-1702. This act applies to all persons, firms, or companies, incorporated or otherwise, that do business as common carriers on any of the lines of railroad in this state.*"

Section 13. Section 72-124, R.C.M. 1947, is amended to read as follows:

"72-124. **Attorney general as attorney for commission.** The attorney general is the attorney of *the commission*, and the county attorney of every county in the state shall, on the request and at the direction of the attorney general, assist in all cases, proceedings, and investigations undertaken by *the commission* under this law, in his own county. *However, the commission may employ special counsel, with the approval of the attorney general, to assist in any case, matter, proceeding, or investigation instituted under this law. The attorney general, upon direction of the commission, and the county attorney of each county in this state, upon direction of the attorney general, shall institute and prosecute, and appear and defend, any action or proceeding arising under this law. All suits and proceedings filed in any court of this state, under this law, shall have precedence over all other business in the court, except criminal business and original proceedings in the supreme court.*"

Section 14. Section 72-136, R.C.M. 1947, is amended to read as follows:

"72-136. **Acceptance of favors and gratuities from railroads prohibited.** *A public service commissioner or the secretary may not, directly or indirectly, solicit or request from or recommend to any railroad corporation, or any officer, attorney, or agent thereof, the appointment of any person to any place or position. Nor shall any railroad corporation, its attorney, or agent, offer any place, appointment, or position or other consideration to such commissioners, or either of them, nor to any clerks or employees of the commission; neither shall the commissioners, or either of them, nor their secretary, clerks, agents, employees, or experts, accept,*

receive, or request any pass from any railroad in this state, for themselves or for any other person, except as herein otherwise provided, or any present, gift, or gratuity of any kind from any railroad corporation; and the request or acceptance by them, or either of them, except as herein specified, of any such place or position, pass, presents, gifts, or other gratuity, shall work a forfeiture of the office of the commissioner or commissioners, secretary, clerk or clerks, agent or agents, and employee or employees, expert or experts, requesting or accepting the same. Any person violating any of the provisions of this section is guilty of a misdemeanor."

Section 15. Section 72-406, R.C.M. 1947, is amended to read as follows:

"72-406. **Company may deposit value of animal.** If a corporation, association, company, or person so owning, controlling, or operating a railroad or branch thereof, *kills or injures an* animal as aforesaid, and *tenders* to the owner or owners thereof, or to his or their agent in that behalf, the amount which they *consider* to be the value thereof, or the damage thereto, as the case may be; or if *the* railroad, corporation, association, company, or person, *deposits* with the *department of livestock* such amount for the owner or owners thereof; and *the* owner or owners, or his or their agent, *refuses* to accept the *amount* in settlement thereof, then *the* owner or owners shall pay all costs incurred in any action instituted, after *the* tender or deposit, to recover *the* value or damage, unless he or they recover *in the action* more than the amount so tendered."

Section 16. Section 72-407, R.C.M. 1947, is amended to read as follows:

"72-407. **Payment of claim for damages to department of livestock.** (1) If livestock are killed by railroad corporations in violation of section 72-401 *and if* the owner of *the* livestock *does not* claim or assert a claim against *the* railroad or railroad corporation for the value of the livestock killed within six (6) months from the date *the* animal or animals are killed, the *department of livestock shall* demand from *the* railroad or railroad corporation payment in damages for livestock. *The department of livestock shall* institute and prosecute, in the name of the state, actions against *the* railroad or railroad companies in a court of competent jurisdiction to recover damages *if the* railroad *fails, neglects, or refuses* to make payment of the amount of the claim filed by the *department of livestock*.

(2) The money recovered shall be paid to the *department of livestock*, and shall be held by the *department of livestock* for a period of two (2) years after the date of its receipt. *If* the lawful owner of the animal killed does not present and prove his claim to the net proceeds received from the animal killed, within *the two (2) years*, the *money* shall be paid to the state treasurer and *credited* to the stock estray fund. *If* the owner of the animal killed *proves* his claim within the *two (2) years*, the *department of livestock may* pay the claimant the amount of money to which he is entitled for the animal or animals killed by *the* railroad or railroad company, the damages for which have been collected by the *department of livestock*.

(3) In actions prosecuted for the recovery of the value of livestock killed under this act, the prevailing or successful party shall recover all costs. *If the owner of an animal or animals killed has not presented his claim against the railroad or railroad company which caused it to be killed, a settlement made by the department of livestock constitutes a bar against an action by the owner of the animal or animals.*"

Section 17. Section 72-409, R.C.M. 1947, is amended to read as follows:

"72-409. **Carcass and hide of animal.** In all cases where a corporation, association, company, or person kills, or injures an animal to such extent that it is necessary to kill the animal, as provided in this chapter, they shall skin the animal, and preserve the whole hide, or so much thereof as can be preserved, including the head and ears, and are entitled to the carcass and hide thereof, unless the owner or owners thereof claim the animal, in which event the amount of the value thereof shall be deducted from the amount of damages which would otherwise be due. But, in case such corporation, association, company, or person, so entitled thereto, takes the carcass and hide, they shall skin the animal as herein provided, and shall deposit the hide thereof at the station designated on their line, such station to be designated by the department of livestock, during the space of sixty (60) days, for the inspection of persons claiming to be interested therein, and if no person claims the animal, then before the corporation, association, company, or person disposes of the hide, they shall notify the stock inspector of the district within which the animal was killed, who shall inspect the hide for marks and brands, and receive from the stock inspector his authority, in writing, to dispose of the hide. The stock inspector shall notify all owners of the stock, if known or ascertainable from the inspection, of the death of the animal, and if the owner is unknown, the stock inspector shall notify the department of livestock of the death of the animal. The corporation, association, company, or person may dispose of the whole animal, including the carcass and hide, to any licensed rendering plant or licensed renderer in the state, if the owner or owners do not claim the animal. Upon receiving the animal, the licensed rendering plant or licensed renderer shall skin the animal, and shall preserve the hide, or so much thereof as can be preserved, including the hide of head and ears, and the hide shall be stored separate and apart from hides received from other sources. Within five (5) days after receipt of the hide, the licensed rendering plant or licensed renderer shall notify the department of livestock of possession of the hide. The department of livestock shall make an inspection thereof within ten (10) days after being so notified, and shall immediately notify the owner thereof, if ownership be ascertainable, of the death of the animal. If no person claims the hide of the animal within thirty (30) days after notice given to the department of livestock by the licensed renderer or licensed rendering plant, the department of livestock shall give written authorization to the licensed rendering plant or licensed renderer to dispose of the hide. Before making disposition thereof under the written authorization, the licensed rendering plant or licensed renderer shall obtain the consent of the corporation, association, company, or person from which the animal was received."

Section 18. Section 72-620, R.C.M. 1947, is amended to read as follows:

**"72-620. Persons or property may be transported free or at reduced rates in certain cases.** No provisions of the laws of *this* state shall prevent any person, association, company, or corporation engaged as a common carrier of persons or property in *this* state, from carrying, storing, or handling property free, or at reduced rates, for the United States, state, or municipal governments, or for charitable institutions, or property which is being transported to or from fairs and expositions for exhibit thereat, or cars used by the government of the United States or state of Montana for the transportation of fish, for carrying free or at reduced rates agents and employees employed in such transportation, and nothing therein contained shall prevent such person, association, company, or corporation from issuing free transportation, or selling tickets at reduced rates, to the following classes of persons:

- (1) Employees of the issuing road, and the members of their families.
- (2) Officers and employees of other railroads, and the members of their families upon the exchange of passes or tickets.
- (3) Doctors, nurses, and helpers being carried to wrecks.
- (4) Soldiers or sailors going to or coming from institutions for their keeping.
- (5) Ministers of religion and persons engaged in charitable or religious work, and destitute or homeless persons being transported by charitable societies, or at public expense.
- (6) Executive, judicial, or legislative officers of *this* state including the members of the faculty of the different educational institutions of the state. *When* free transportation, or a ticket at a reduced rate, *is* issued to any such officer, or any president or member of the faculty of any educational institution, *it* shall only be issued upon the application of the secretary of state, and the transportation, or ticket, shall be delivered to the secretary of state for delivery to the person or persons applying therefor, and the secretary of state shall keep record of all transportation and tickets at reduced rates so received and delivered by him. *The* state officer and the president and faculty of the state educational institutions when traveling upon any free transportation, *may* not charge any mileage against the state, or if traveling upon a ticket sold at reduced fare, they *may* not charge mileage in excess of the cost of *the* ticket."

Section 19. Section 89-1712, R.C.M. 1947, is amended to read as follows:

**"89-1712. Refunding bonds.** Any irrigation district may issue refunding bonds."

Section 20. There is a new section to be numbered 82A-1704, R.C.M. 1947, which reads as follows:

**82A-1704. Name changes.** Wherever the words "board of railroad commissioners," "board," "Montana railroad commission," "board of railroad commissioners of the state of Montana," "board of railroad commissioners of Montana," "railroad commissioners," "railroad commission," and "railroad commission of the state of Montana" appear in sections 8-103,

8-103.1, 8-103.3, 8-111.1, 8-114, 8-127, 8-129, 8-131, 8-202, 8-203, 8-204, 8-205, 8-206, 8-207, 8-209, 8-210, 72-117, 72-121, 72-126, 72-127, 72-133, 72-134, 72-135, 72-142, 72-145, 72-146, 72-147, 72-150, 72-151, 72-152, 72-156, 72-158, 72-159, 72-160, 72-162, 72-163, 72-164, 72-165, 72-166, 72-167, 72-168, 72-662, 72-664, 72-704, 72-705, 72-706, 72-707, 72-708, 72-709, 72-711, R.C.M. 1947, the word "commission" is substituted therefor.

Section 21. There is a new section to be numbered 82A-1705, R.C.M. 1947, which reads as follows:

**82A-1705. Name changes.** Wherever the words "Montana railroad and public service commission," "railroad commissioners," "board of railroad commissioners," "board of railroad commissioners of the state of Montana," and "railroad commission of this state," appear in sections 11-1019, 11-1021, 72-627, 72-703, 88-207, 89-605, R.C.M. 1947, the words "public service commission" are substituted therefor.

Section 22. There is a new section to be numbered 82A-1706, R.C.M. 1947, which reads as follows:

**82A-1706. Name changes.** Wherever the words "railroad commissioners," "railroad and public service commissioners," and "railroad commissioner" appear in sections 23-3313, 23-3314, 23-3513, 25-501, 59-538, R.C.M. 1947, the words "public service commissioners" are substituted therefor.

Section 23. The publishers of the Revised Codes of Montana, 1947, are directed, under the supervision of the supreme court of Montana, to make the substitutions enumerated in sections 20, 21, and 22 of this act, when reprinting sections or portions of sections of the Revised Codes in either supplements to or replacement volumes for the Revised Codes.

Section 24. Sections 8-115, 8-117, 8-120, 19-117, 19-118, 70-102, 70-118, 72-102, 72-104, 72-111, 72-141, 72-631 through 72-634, 82A-1703, R.C.M. 1947, are repealed.

Approved March 28, 1974

## CHAPTER NO. 316

### AN ACT FOR THE CODIFICATION AND GENERAL REVISION OF THE LAWS RELATING TO THE DEPARTMENT OF HIGHWAYS.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 11-1023, R.C.M. 1947, is amended to read as follows:

**"11-1023. Contracting with department of highways or federal agencies regarding construction or reconstruction of highways, streets, and roads.** The city council, commission or other governing body



of any city or town may, whenever highway construction work is to be financed in whole or in part by federal funds, contract jointly or independently with the *department of highways*, United States *federal highway administration*, or other federal agency, for the construction or reconstruction of highways, roads and streets, to acquire rights of way, and do any other thing essential and practical in securing *the* highway, road and street construction or reconstruction or rights of way as may be agreed upon between *the* city council, commission or other governing body and the *department of highways* or federal agency. All contracts for work on highways, roads and streets which *are* let pursuant to *this* authority shall be let by the highway commission."

Section 2. Section 32-317, R.C.M. 1947, is renumbered 32-2816, and is amended to read as follows:

**"32-2816. Designation of emergency area near construction project.** A board of county commissioners may designate a portion of a county or state secondary road as an emergency area if increased traffic due to a construction project threatens public safety."

Section 3. Section 32-318, R.C.M. 1947, is renumbered 32-2817, and is amended to read as follows:

**"32-2817. Notice of designation of emergency area — removal of designation.** Notice of *the* designation shall be printed in a newspaper of general circulation in the county. The notice shall describe the portion of road to be designated as an emergency area and the reason for *the* designation. The board shall post the area or roads affected with adequate signs. The board shall remove the emergency designation within thirty (30) days after the cessation of the increased traffic."

Section 4. Section 32-319, R.C.M. 1947, is renumbered 32-2818, and is amended to read as follows:

**"32-2818. Livestock not to run at large in emergency area.** A person who owns or has custody of livestock *may* not permit the livestock to run upon the emergency area unless the livestock are under herd in transit across the emergency area in the custody of an attendant."

Section 5. Section 32-320, R.C.M. 1947, is renumbered 32-2819, and is amended to read as follows:

**"32-2819. Impounding of animals at large — notice to owner — fees and mileage.** A sheriff or other peace officer may impound livestock running on an emergency area without an attendant and shall notify the rightful owner of such impounded livestock. If the sheriff or peace officer cannot determine the rightful owner, then a state stock inspector of *the department of livestock* or a deputy state stock inspector of the county may be called to examine the livestock for brands to determine ownership. The rightful owners shall be notified by the inspector and the usual inspection fees and mileage shall be paid by the owner of such livestock."

Section 6. Section 32-321, R.C.M. 1947, is renumbered 32-2820, and is amended to read as follows:

**"32-2820. Penalty for violations.** A person *who violates section*

32-2818 is guilty of a misdemeanor and shall be fined not less than ten dollars (\$10) nor more than fifty dollars (\$50) for each violation."

Section 7. Section 32-1018, R.C.M. 1947, is renumbered 32-21-176, and is amended to read as follows:

"32-21-176. **Grazing livestock on highway unlawful.** A person who owns or *possesses* livestock, *may not* permit *the* livestock to graze, remain upon or occupy a part of the right of way of a state highway running through cultivated areas, *nor* a part of the fenced right of way of a state highway, *if* in either case *the highway* has been designated by agreement between the highway commission and the secretary of *transportation* as a part of the national system of interstate and defense highways; *nor* a state highway, designated by agreement between the highway commission and the secretary of *transportation* as a part of the federal-aid primary system except as provided in *section 32-1019*."

Section 8. Section 32-1019, R.C.M. 1947, is renumbered 32-21-177, and is amended to read as follows:

"32-21-177. **Exclusions from preceding section.** *Section 32-1018 does not apply to the following:*

- (1) *Livestock* on state highways in charge of one (1) or more herders.
- (2) *The* parts of fenced highways adjacent to open range where a highway device has *not* been installed to exclude range livestock.
- (3) *The* parts of a state highway, a part of the federal-aid primary system, *which* the *department of highways designates* as being impracticable to exclude livestock. *These* portions of the highway shall be marked by proper signs in accordance with the *department's* manual and specifications for a uniform system of traffic-control devices."

Section 9. Section 32-1020, R.C.M. 1947, is renumbered 32-21-178, and is amended to read as follows:

"32-21-178. **Penalty for violating act.** *A person who violates section 32-21-176 is guilty of a misdemeanor and is subject to a fine of not less than five dollars (\$5), nor more than one hundred dollars (\$100), for each offense. In a civil action brought by the owner, driver or occupant of a motor vehicle, or by their personal representatives or assigns, or by the owner of livestock, for damages caused by collision between a motor vehicle and a domestic animal or animals on a highway, there is no presumption or inference that the collision was due to negligence on the part of the owner or the person in possession of the livestock, or the driver or owner of the vehicle.*"

Section 10. Section 32-1021, R.C.M. 1947, is renumbered 32-21-179, and is amended to read as follows:

"32-21-179. **Flagmen escorts — prohibitions against nighttime herding on public highways.** A person who owns, controls or *possesses* livestock *may not* herd or drive a herd of livestock *numbering more than* ten (10) on an interstate or state primary *highway designated as such* by the highway commission unless the livestock *are* preceded and followed

by flagmen escorts for the purpose of warning other highway users. Live-stock *may* not be herded *nor* driven on *an* interstate or state primary *highway* during nighttime as *that term is* defined in section 90-406, except in a case of emergency. *In the case of an emergency, during the nighttime* the flagmen escorts *shall* use adequate warning lights such as, but not limited to, portable lamps, lanterns, or rotating beacons. This *section does* not apply during daytime at posted livestock crossings on highways."

Section 11. Section 32-1022, R.C.M. 1947, is renumbered 32-21-180, and is amended to read as follows:

"**32-21-180. Violations.** *A person who violates section 32-21-179 is guilty of a misdemeanor.*"

Section 12. There is a new section to be numbered 32-1123.1, R.C.M. 1947, which reads as follows:

32-1123.1. **Standards of maximum dimensions, weights, etc.** The standards provided for in sections 32-1123.2 through 32-1123.11 govern the maximum dimensions, weights, and other characteristics of motor vehicles operating over the highways in the state to the exclusion of other standards or other requirements respecting the subject matter.

Section 13. There is a new section to be numbered 32-1123.2, R.C.M. 1947, which reads as follows:

32-1123.2. **Definitions.** In sections 32-1123.1 through 32-1123.11, the following definitions apply:

- (1) Vehicle — as defined in section 32-2102.
- (2) Motor vehicle — as defined in section 32-2102.
- (3) Truck-tractor — as defined in section 32-2103.
- (4) Truck — as defined in section 32-2104.
- (5) Trailer — as defined in section 32-2105.
- (6) Semitrailer — as defined in section 32-2105.
- (7) Dolly or converter gear — a device consisting of one (1) or two (2) axles with a fifth wheel and trailer tongue used to support the forward end of a semitrailer, thereby converting a semitrailer into a trailer.

Section 14. There is a new section to be numbered 32-1123.3, R.C.M. 1947, which reads as follows:

32-1123.3. **Width.** A vehicle, unladen or with load, may not have a total outside width in excess of one hundred two (102) inches, except buses which may have a total outside width not to exceed one hundred two (102) inches. This bus width is allowed only on paved highways twenty (20) feet or more in width. This restriction does not apply to an implement of husbandry moved or propelled upon the highway during daylight hours for a distance of not more than one hundred (100) miles, if the movement is incidental to the farming operations of the owner of the implement of husbandry. If the implement of husbandry has a width in excess of twelve (12) feet, it shall be preceded by flagmen escorts for the purpose of warn-

ing other highway users; provided, however, that this restriction does not apply to dual wheel tractors under fifteen (15) feet over-all width which are used in farming operations. The rear of such an implement of husbandry shall properly display lights which meet standard requirements in Section 32-21-134, R.C.M. 1947. However, if the highway passes through a hazardous area, such implements of husbandry must be preceded and followed by flagman escorts.

Section 15. There is a new section to be numbered 32-1123.4, R.C.M. 1947, which reads as follows:

32-1123.4. **Height.** A vehicle, unladen or with load, may not exceed a height of thirteen (13) feet, six (6) inches.

Section 16. There is a new section to be numbered 32-1123.5, R.C.M. 1947, which reads as follows:

32-1123.5. **Length.** (1) A single truck, unladen or with load, may not have an overall length, inclusive of front and rear bumpers, in excess of thirty-five (35) feet.

(2) A single bus, unladen or with load, may not have an overall length, inclusive of front and rear bumpers, in excess of forty (40) feet.

(3) A combination of truck and trailer, tractor and semitrailer, tractor-semitrailer-full trailer, or tractor-semitrailer-semitrailer converted to a trailer by use of a dolly equipped with a fifth wheel, may not have an overall length, inclusive of front and rear bumpers, in excess of sixty (60) feet. If the combination consists of more than two (2) units, the rear units of the combination shall be equipped with breakaway brakes.

(4) A motor vehicle may not tow more than one (1) motor vehicle, and a motor vehicle may not draw more than two (2) motor vehicles attached to it by the dual saddle-mount method, that is by mounting the front wheels of one (1) vehicle on the bed of another, leaving only the rear wheels of the vehicle in contact with the roadway, nor may this combination have an overall length, inclusive of front and rear bumpers, in excess of sixty (60) feet.

(5) A passenger vehicle or truck of less than two thousand (2,000) pounds "manufacturers' rated capacity" may not tow more than one (1) trailer or semitrailer, nor may this combination have an overall length, inclusive of front and rear bumpers, in excess of sixty (60) feet.

Section 17. There is a new section to be numbered 32-1123.6, R.C.M. 1947, which reads as follows:

32-1123.6. **Permissible loads.** (1) An axle may not carry a load in excess of eighteen thousand (18,000) pounds. An axle load is defined as the total load transmitted to the road by all wheels whose centers are included between two (2) parallel transverse verticle planes forty (40) inches apart, extending across the full width of the vehicle.

(2) (a) The gross weight of a group of axles of a vehicle or combination of vehicles, if the distance between first and last axles of a group of axles is eighteen (18) feet or less, and the gross weight of a vehicle if the distance between the first and last axles of all the axles of the vehicle is eighteen (18) feet or less, may not exceed that set forth in the following table of weights:

|                                                                                                                                                                                                     |                                                                                                                                      |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------|
| DISTANCE IN FEET BETWEEN<br>THE FIRST AND LAST AXLES OF<br>ANY GROUP OF AXLES OF ANY<br>OR COMBINATION OF<br>VEHICLES OR BETWEEN THE FIRST<br>AND LAST AXLES OF ALL OF THE<br>AXLES OF ANY VEHICLE. | MAXIMUM GROSS WEIGHT,<br>IN POUNDS, OF ANY GROUP<br>OF AXLES, OF ANY VEHICLE<br>OR COMBINATION OF<br>VEHICLES, OR<br>OF ANY VEHICLE. |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------|

|    |        |
|----|--------|
| 4  | 32,000 |
| 5  | 32,000 |
| 6  | 32,200 |
| 7  | 32,900 |
| 8  | 33,600 |
| 9  | 34,300 |
| 10 | 35,000 |
| 11 | 35,700 |
| 12 | 36,400 |
| 13 | 37,100 |
| 14 | 43,200 |
| 15 | 44,000 |
| 16 | 44,800 |
| 17 | 45,600 |
| 18 | 46,400 |

(b) The gross weight of a vehicle or combination of vehicles, if the distance between the first and last axles of the vehicle or combination of vehicles is more than eighteen (18) feet, may not exceed that set forth in the following table of weights:

|                                                                                                                      |                                                                                   |
|----------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------|
| DISTANCE IN FEET BETWEEN<br>THE FIRST AND LAST AXLES OF<br>ALL THE AXLES OF A VEHICLE<br>OR COMBINATION OF VEHICLES. | MAXIMUM GROSS WEIGHT, IN<br>POUNDS, OF ANY VEHICLE OR<br>COMBINATION OF VEHICLES. |
|----------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------|

|    |        |
|----|--------|
| 18 | 46,400 |
| 19 | 47,200 |
| 20 | 48,000 |
| 21 | 48,800 |
| 22 | 49,600 |
| 23 | 50,400 |
| 24 | 51,200 |
| 25 | 55,250 |
| 26 | 56,100 |
| 27 | 56,950 |
| 28 | 57,800 |
| 29 | 58,650 |
| 30 | 59,500 |
| 31 | 60,350 |
| 32 | 61,200 |
| 33 | 62,050 |
| 34 | 62,900 |
| 35 | 63,750 |
| 36 | 64,600 |
| 37 | 65,450 |
| 38 | 66,300 |
| 39 | 68,000 |
| 40 | 70,000 |

|    |        |
|----|--------|
| 41 | 72,000 |
| 42 | 73,280 |
| 43 | 73,280 |
| 44 | 73,280 |
| 45 | 73,280 |
| 46 | 73,280 |
| 47 | 73,280 |
| 48 | 73,280 |
| 49 | 73,280 |
| 50 | 73,280 |
| 51 | 73,280 |
| 52 | 73,600 |
| 53 | 74,400 |
| 54 | 75,200 |
| 55 | 76,000 |
| 56 | 76,400 |
| 57 | 76,800 |

Section 18. There is a new section to be numbered 32-1123.7, R.C.M. 1947, which reads as follows:

32-1123.7. **Special permits.** The department of highways may, based on evaluation of safety, highway capacity, and economics of highway maintenance and vehicle operation, authorize by special permit at a fee of ten dollars (\$10), specifying highway routings, the operation of a vehicle having two (2) but not more than nine (9) axles if the maximum single axle load is twenty thousand (20,000) pounds and if no two (2) consecutive axles more than forty (40) inches or less than ninety-six (96) inches apart carry a load in excess of thirty-four thousand (34,000) pounds. For purposes of this section, axles forty (40) inches or less apart are considered as a single axle. The maximum gross weight allowed on a vehicle or combination so authorized by this special permit shall be determined by the formula  $W \text{ equals } 500 (LN/N \text{ minus } 1 \text{ plus } 12N \text{ plus } 36)$  in which  $W$  equals gross weight,  $L$  equals wheel base in feet, and  $N$  equals number of axles. However, the maximum allowable gross weight on a group of axles may not exceed the following values:

|         |                |
|---------|----------------|
| 2 axles | 40,000 pounds  |
| 3 axles | 60,000 pounds  |
| 4 axles | 80,000 pounds  |
| 5 axles | 85,500 pounds  |
| 6 axles | 90,000 pounds  |
| 7 axles | 105,500 pounds |
| 8 axles | 105,500 pounds |
| 9 axles | 105,500 pounds |

This section does not apply to highways which are a part of the national system of interstate and defense highways (as referred to in section 127 of Title 23, United States Code) when application of this section would prevent this state from receiving federal funds for highway purposes.

Section 19. There is a new section to be numbered 32-1123.8, R.C.M. 1947, which reads as follows:

32-1123.8. **Measuring distance between axles.** The distance between axles shall be measured to the nearest foot. When a fractional measurement is exactly one-half ( $\frac{1}{2}$ ) foot, the next larger whole number shall be used.

Section 20. There is a new section to be numbered 32-1123.9, R.C.M. 1947, which reads as follows:

**32-1123.9. Reduction under special circumstances.** The maximum axle and axle group loads stated in section 32-1123.6 are subject to reasonable reduction in the discretion of the department during periods when road subgrades have been weakened by water saturation or other causes.

Section 21. There is a new section to be numbered 32-1123.10, R.C.M. 1947, which reads as follows:

**32-1123.10. Operation without special permits.** The operation of vehicles or combinations of vehicles having dimensions or weights in excess of the maximum limits specified in sections 32-1123.1 through 32-1123.9 is permitted only if authorized by special permit issued by the department of highways or its agents, or the highway patrol.

Section 22. There is a new section to be numbered 32-1123.11, R.C.M. 1947, which reads as follows:

**32-1123.11. Federal law.** Sections 32-1123.1 through 32-1123.10 do not authorize, without a permit issued as provided by law, the operation of a combination of vehicles having a gross weight, axle load or size in excess of that authorized in those sections, or the operation of a combination of vehicles on the national system of interstate and defense highways having a gross weight or size in excess of that permitted by law in this state before July 1, 1956, or by federal law or regulation in excess thereof, which is adopted. If federal law allows establishment of size and weight limits in excess of those permitted in those sections, without penalty or denial of federal funds for highway purposes, the department of highways may, by permit designating highway routing, authorize the movement on highways under its jurisdiction of vehicles or combinations of vehicles of a size or weight in excess of the limits provided for in those sections, but within the limits necessary to qualify for federal aid highway funds.

Section 23. There is a new section to be numbered 32-1123.12, R.C.M. 1947, which reads as follows:

**32-1123.12. Authority of local authorities.** A local authority may not alter the limitations provided in sections 32-1123.1 through 32-1123.11, or substitute other limitations or requirements, except as provided in section 32-1128.

Section 24. Section 32-1124, R.C.M. 1947, is amended to read as follows:

**"32-1124. Violation, a misdemeanor.** (1) *It is a misdemeanor for a person, firm, or corporation to violate any provision of sections 32-1123.1 through 32-1123.11.*

(2) *However, the operator of a vehicle which is loaded at a location where no scale exists may move the vehicle over the highways to the first open state scale without violating those sections and incurring the penalties provided by section 32-1125. The origin of movement shall be at such a distance from a scale that the operator could not have been reasonably expected to check the weight of the vehicle during the loading. The operator shall exhibit shipping papers or other written evidence of the location at which the vehicle was loaded. The operator shall move the vehicle toward its destination over the most direct highway route and stop at the first open state scale, permanent or portable. The load must be adjusted or reduced*

*to conform to the size and weight limitations of the vehicle before the vehicle is moved from the point of weighing."*

Section 25. Section 32-1125, R.C.M. 1947, is amended to read as follows:

"32-1125. **Penalties.** (1) A person, firm or corporation *convicted of violating sections 32-1123.1 through 32-1123.11* shall be punished by a fine of not less than fifteen dollars (\$15) nor more than fifty dollars (\$50), or by imprisonment in the county or municipal jail for not less than five (5) days nor more than twenty-five (25) days. *In addition, a person, firm or corporation convicted of operating a motor vehicle upon the public highways of this state with weight upon a wheel, axle or group of axles or upon more than one (1) of them greater than the maximum permitted by sections 32-1123.1 through 32-1123.11, shall be fined, in addition to other penalties provided by law for the offense, the following amounts:*

(a) Fifteen dollars (\$15) for any excess weight up to and including two thousand (2,000) pounds.

(b) Twenty-five dollars (\$25) for any excess weight more than two thousand (2,000) pounds and less than four thousand and one (4,001) pounds.

(c) Thirty-five dollars (\$35) for any excess weight more than four thousand (4,000) pounds and less than six thousand and one (6,001) pounds.

(d) Fifty dollars (\$50) for any excess weight more than six thousand (6,000) pounds and less than eight thousand and one (8,001) pounds.

(e) Eighty dollars (\$80) for any excess weight more than eight thousand (8,000) pounds and less than ten thousand and one (10,001) pounds.

(f) One hundred ten dollars (\$110) for any excess weight more than ten thousand (10,000) pounds and less than twelve thousand and one (12,001) pounds.

(g) One hundred and fifty dollars (\$150) for any excess weight more than twelve thousand (12,000) pounds and less than fourteen thousand and one (14,001) pounds.

(h) Two hundred dollars (\$200) for any excess weight more than fourteen thousand (14,000) pounds and less than sixteen thousand and one (16,001) pounds.

(i) Two hundred fifty dollars (\$250) for any excess weight more than sixteen thousand (16,000) pounds and less than eighteen thousand and one (18,001) pounds.

(j) Three hundred dollars (\$300) for any excess weight more than eighteen thousand (18,000) pounds and less than twenty thousand and one (20,001) pounds.

(k) Five hundred dollars (\$500) for any excess weight more than twenty thousand (20,000) pounds and less than twenty-five thousand and one (25,001) pounds.

(l) One thousand dollars (\$1,000) for any excess weight more than twenty-five thousand (25,000) pounds.

(2) A *complaint* filed and a *summons* or *notice* to appear issued pertaining to a *violation* of the gross weight regulations in *sections 32-1123.1 through 32-1123.11*, shall specify the amount of the overweight, which the defendant is alleged to have had upon the vehicle or combination of vehicles.



(3) All fines and forfeitures shall be remitted monthly by the county treasurer to the state treasurer for deposit in the state general fund."

Section 26. Section 32-1126, R.C.M. 1947, is amended to read as follows:

**"32-1126. Officers may weigh vehicles and require removal of excessive loads — badges and uniforms of highway employees.**

(1) A peace officer, officer of the highway patrol, or *employee* of the department may weigh any vehicle *regulated by sections 32-1123.1 through 32-1123.11*, either by means of portable or stationary scales, and may require that *the* vehicle be driven to the nearest scales *if those* scales are within two (2) miles. *That person* may then require the driver to unload immediately *that* portion of the load necessary to decrease the weight of *the* vehicle to conform to the maximum allowable weights specified in *sections 32-1123.1 through 32-1123.11*.

(2) *Commodities* and material unloaded as required by this section shall be cared for and removed from the highway right of way by the owner or operator of *the* vehicle at the risk of *that* owner or operator. *The* removal shall be within a reasonable time designated by the *person* who has compelled *the* unloading.

(3) The *department* may establish, maintain, and operate, either intermittently or on a continuous schedule, weigh stations and require vehicles, except passenger cars and pickup trucks under eight thousand (8,000) pounds G.V.W., to enter for the purpose of weighing and inspection for compliance with all laws pertaining to *their* operation and safety requirements.

(4) An *employee* of the *department* engaged in the enforcement of this section shall wear and prominently display an identification badge or device *which shows* the employee's name and title. The *department* may authorize uniform dress for *those* employees."

Section 27. There is a new section to be numbered 32-1127.1, R.C.M. 1947, which reads as follows:

**32-1127.1. Permits for excess size and weight.** (1) The department of highways, and local authorities in their respective jurisdictions, may, in their discretion, upon application in writing and with good cause shown, issue a special permit in writing, authorizing the applicant to operate or move a vehicle, combination of vehicles, load, object, or other thing of a size or weight exceeding the maximum specified in sections 32-1123.1 through 32-1123.11 upon a highway under the jurisdiction of and for the maintenance of which the body granting the permit is responsible; however, only the department has the discretion to issue permits for movement of a vehicle or combination of vehicles carrying built-up or reducible loads in excess of nine (9) feet in width or exceeding the length, height, or weight specified in sections 32-1123.1 through 32-1123.11. This permit shall be issued in the public interest; a carrier receiving this permit must have public liability and property damage insurance for the protection of the traveling public as a whole. A permit may not be issued for a period of time greater than the license period provided in Title 53 or Title 32, including grace periods allowed by those titles. Owners of vehicles licensed in other jurisdictions may, at the discretion of the department, purchase permits to expire with their registration. A license required by the state

governs the issuance of a special permit. The department may issue oversize permits to dealers in implements of husbandry and self-propelled machinery which may be transferred from unit to unit by the dealer for the fees set forth in section 32-1127.3. These oversize permits expire on December 31 of each year with no grace period. For the purposes of this section, a dealer in implements of husbandry or self-propelled machinery must be a resident of the state. A post-office box number is not a permanent address under this section.

(2) The applicant for a special permit shall specifically describe the powered vehicle or towing vehicle and generally describe the type of vehicle, combination of vehicles, load, object, or other thing to be operated or moved and the particular state highways over which the vehicle, combination of vehicles, load, object, or other thing is to be moved and whether the permit is required for a single trip or for continuous operation.

Section 28. There is a new section to be numbered 32-1127.2, R.C.M. 1947, which reads as follows:

**32-1127.2. Special permits — discretion of issuer — conditions.** The department or local authority may issue or withhold a special permit at its discretion, or, if the permit is issued, limit the number of trips, or establish seasonal or other time limitations within which the vehicle, combination of vehicles, load, object, or other thing described may be operated on the public highways indicated, or otherwise limit or prescribe conditions of operation of the vehicle, combination of vehicles, load, object, or other thing when necessary to assure against damage to the road foundation, surfaces or structures or safety of traffic, and may require an undertaking or other security considered necessary to compensate for injury to a roadway or road structure. During harvest no permit may be denied to oversize harvest or harvest-related agricultural machinery solely on the grounds that the travel takes place on a Saturday or Sunday.

Section 29. There is a new section to be numbered 32-1127.3, R.C.M. 1947, which reads as follows:

**32-1127.3. Special permits — fees.** The following fees, in addition to the regular license and gross vehicle weight fees, shall be paid for all movements under special permits on the public highways under the jurisdiction of the department:

Six dollars (\$6) for each permit issued in excess of the size and weight specified in section 32-1123.1 through 32-1123.11. Term or blanket permits may not be issued for overwidth vehicles, combination of vehicles, load or other thing in excess of fifteen (15) feet, overlength vehicles, combination of vehicles, load, object or other thing in excess of eighty-five (85) feet, and overheight vehicles, combination of vehicles, load, or other thing in excess of thirteen and one-half (13 ½) feet or of a limit determined by the department. A vehicle, combination of vehicles, load, or other thing in excess of these dimensions is limited to trip permits.

Section 30. There is a new section to be numbered 32-1127.4, R.C.M. 1947, which reads as follows:

**32-1127.4. Self-propelled vehicles.** A self-propelled vehicle used only for the purpose of moving haystacks on a commercial basis is subject to sections 32-1127.1 through 32-1127.9 except as follows:

(1) The vehicle, loaded or unloaded, may not exceed fifty-five (55) feet in length nor twenty (20) feet in width.

(2) A single load may not be moved on the vehicle a distance greater than seventy-five (75) miles from the point of origin on public roads.

(3) When the vehicle is hauling a load, it shall be accompanied by two (2) pilot cars. Each car shall be equipped with a flashing warning light, a red flag, and a sign with the words "wide load" written on it. One (1) car shall precede the vehicle by not less than one hundred (100) yards nor more than one-quarter ( $\frac{1}{4}$ ) mile, and one (1) shall follow the vehicle at a distance not less than one hundred (100) yards nor more than one-quarter ( $\frac{1}{4}$ ) mile. The following pilot car shall be in radio contact with the vehicle at all times.

(4) The speed of the vehicle shall be reasonable and proper but not in excess of thirty-five (35) miles per hour.

(5) The vehicle shall be operated only between the hours of sunrise and sunset.

(6) The vehicle may not be operated on an interstate or controlled-access highway.

(7) A term or blanket permit may be issued for the vehicle.

Section 31. There is a new section to be numbered 32-1127.5, R.C.M. 1947, which reads as follows:

**32-1127.5. Other fees — exemption.** A fee of six dollars (\$6) shall be paid for each overweight permit issued, but a permit may not be issued for a period of time greater than the license period provided in Title 53 or Title 32, including grace periods allowed by those titles. Owners of vehicles licensed in other jurisdictions may, at the discretion of the department, purchase permits to expire with their registration. A license required by the state governs the issuance of a special permit. In addition to the permit fee, there shall be charged for single trip permits: five dollars (\$5) for distances to and including one hundred (100) miles; fifteen dollars (\$15) for distances from one hundred one (101) to one hundred ninety-nine (199) miles; and twenty-five dollars (\$25) for distances over two hundred (200) miles traveled, for the excess load over the gross allowable load or the sum of the excess axle loads, whichever is greater.

Section 32. There is a new section to be numbered 32-1127.6, R.C.M. 1947, which reads as follows:

**32-1127.6. Permits issued to governmental entities.** Permits issued to the United States government, states, counties, cities and their political subdivisions, shall be issued without fee for a term beginning with the date of issuance and expiring December 31.

Section 33. There is a new section to be numbered 32-1127.7, R.C.M. 1947, which reads as follows:

**32-1127.7. Special permits — misrepresentations and violations.** A person who knowingly and willfully misrepresents the size or weight of a vehicle, combination of vehicles, load, object, or other thing in obtaining a special permit, or who does not follow the requirements and conditions of the special permit, or who operates a vehicle, combination of vehicles, load, object or other thing, the gross weight of which is in excess of the maximum for which that vehicle, combination of vehicles, load, object, or other thing may be eligible for license, without first obtaining a special permit, is guilty of a misdemeanor.

Section 34. There is a new section to be numbered 32-1127.8, R.C.M. 1947, which reads as follows:

**32-1127.8. Display of permit.** A special permit issued under section 32-1127.1 shall be carried in the vehicle or combination of vehicles to which it refers and shall be open to inspection by any peace officer, officer of the highway patrol, or employee of the department.

Section 35. There is a new section to be numbered 32-1127.9, R.C.M. 1947, which reads as follows:

**32-1127.9. Confiscation — action by commission.** A peace officer, officer of the highway patrol, or employee of the department who finds a person operating a vehicle, combination of vehicles, load, object, or other thing in violation of the conditions of a special permit may confiscate the permit and forward it to the highway commission. The commission may return it to the permittee or revoke, cancel, or suspend it without refund. The commission shall keep a record of all action taken upon confiscated permits, and if a permit is returned to the permittee, the action taken by the commission shall be endorsed on it. A permittee whose permit is suspended or revoked may, upon request, receive a hearing before the commission or person designated by the commission. The commission, after the hearing, may reinstate the permit or revise its previous action.

Section 36. There is a new section to be numbered 32-1127.10, R.C.M. 1947, which reads as follows:

**32-1127.10. Deposit of fees.** All fees collected under sections 32-1123.1 through 32-1127.9 shall be forwarded to the state treasurer for deposit in the state highway account in the earmarked revenue fund.

Section 37. Section 32-1128, R.C.M. 1947, is amended to read as follows:

**"32-1128. When state or local road authorities may restrict right to use highways.** *The department by order, or a local road authority by ordinance or resolution, may prohibit the operation of or impose restrictions on the weight of a vehicle traveling on a public highway under its respective jurisdiction and for which it is responsible for maintenance, whenever the highway will be seriously damaged or destroyed by deterioration, rain, snow or other climatic conditions, unless the use of vehicles on the highway is prohibited or the permissible vehicle weights are reduced. The department, or the authority who enacts the ordinance or resolution shall erect signs designating the department's order or the authority's ordinance or resolution at each end of that portion of the high-*

way affected, and the *order or ordinance or resolution is not effective until the signs are erected. The department, or the authority by ordinance or resolution, may prohibit the operation of trucks or other commercial vehicles, or impose limitations on their weight on designated highways. These prohibitions and limitations shall be designated by appropriate signs placed on the highways.*"

Section 38. Section 32-1130, R.C.M. 1947, is amended to read as follows:

"32-1130. **Penalties for misdemeanor.** (1) *It is a misdemeanor for a person, firm or corporation to violate any of the provisions of section 32-1128.*

(2) *A person, firm or corporation first convicted of a misdemeanor for a violation of any of the provisions of section 32-1128 shall be punished by a fine of not less than ten dollars (\$10) nor more than fifty dollars (\$50), or by imprisonment in the county or municipal jail for not less than five (5) days nor more than twenty-five (25) days; for a second conviction within one (1) year the person, firm or corporation shall be punished by a fine of not less than fifty dollars (\$50), nor more than two hundred dollars (\$200) or by imprisonment in the county or municipal jail for not less than twenty-five (25) days nor more than one hundred (100) days, or by both this fine and imprisonment; upon a third or subsequent conviction within one (1) year after the first conviction the person, firm or corporation shall be punished by a fine of not less than two hundred dollars (\$200), nor more than five hundred dollars (\$500), or by imprisonment in the county or municipal jail for not less than one hundred (100) days nor more than six (6) months, or by both this fine and imprisonment."*

Section 39. Section 32-1502, R.C.M. 1947, is amended to read as follows:

"32-1502. **Notice of application.** The board of commissioners *may not grant authority to erect a toll ferry until the notice of the intended application has been given as required in section 32-1503.*"

Section 40. Section 32-1627, R.C.M. 1947, is amended to read as follows:

"32-1627. **State payment of construction and maintenance costs within municipalities — municipal share of curb and gutter costs.** (1) Except as provided in subsection (2) of this section, the *department of highways* shall pay the entire costs of construction and maintenance of streets and highways which:

- (a) Are state highway routes; and
- (b) Are within municipalities incorporated prior to January 1, 1965.

(2) *An incorporated municipality shall pay one-half (½) of the state's share of the cost of curbs and gutters along those streets and highways."*

Section 41. Section 32-1628, R.C.M. 1947, is amended to read as follows:

"32-1628. **Bypassing of municipalities — consent of municipal**

**governing body.** (1) The *department* may not construct highway bypasses or highway relocation projects without prior consent of the governing body of an incorporated municipality when the bypasses or projects:

(a) Are not part of the national system of interstate highways built under the national defense highway act; and

(b) Divert motor vehicles from an existing highway route through a municipality incorporated prior to January 1, 1965.

(2) The *department* shall notify the governing body of the municipality by certified mail that *it proposes* to bypass the municipality. A contract *may not* be let nor work commenced until the governing body notifies the *department* of its consent, or until the elapse of sixty (60) days after the notice has been sent by the *department* to the municipality, whichever first occurs. The failure of the municipality to act and notify the *department* of its action within the sixty (60) day period *is* implied consent to the bypass.

(3) Actual consent or refusal to bypass shall be in the form of a resolution, duly adopted by a majority of the members of the governing body of the municipality.

(4) The governing body may not withdraw consent once the *department* has been notified of the consent."

Section 42. Section 32-1632, R.C.M. 1947, is amended to read as follows:

"32-1632. **Appointment of employees as peace officers.** The *director of highways* may appoint employees of the *department* as peace officers to carry out sections 32-1632 through 32-1641. The employees *appointed* may include only those employees of the *department* who are employed in the administration of the gross vehicle weight functions of the *department*. Each employee appointed shall be issued a certificate of appointment and execute an oath of office which shall be entered into the records of the *department*."

Section 43. Section 32-1633, R.C.M. 1947, is amended to read as follows:

"32-1633. **Training of department peace officers — rules.** The *department* shall provide such training as required to qualify those employees to competently perform their duties under sections 32-1632 through 32-1641, and shall *adopt* such rules as are required and necessary for qualification of those employees as peace officers."

Section 44. Section 32-1634, R.C.M. 1947, is amended to read as follows:

"32-1634. **Training required before arrests authorized.** An employee *may not* make arrests until he has successfully completed such training as required by the *department*."

Section 45. Section 32-1635, R.C.M. 1947, is amended to read as follows:

**"32-1635. Official attire required for making arrests and carrying firearms.** Qualified employees *may* make arrests throughout the state only when dressed in official uniform and displaying the official badge authorized by the *department*. Authorized employees may not carry firearms unless officially attired."

Section 46. Section 32-1636, R.C.M. 1947, is amended to read as follows:

**"32-1636. Power to inspect vehicle registration, receipts and other documents.** Employees of the *department* appointed under section 32-1632 *may* when officially dressed make reasonable inspection of vehicle registration receipts, *department* receipts and registrations, special permits, and other documents required to be carried in or for a vehicle traveling on the public highways of Montana."

Section 47. Section 32-1637, R.C.M. 1947, is amended to read as follows:

**"32-1637. Identification badge and uniform.** Employees of the *department* engaged in the enforcement of sections 32-1632 through 32-1641 shall wear and prominently display an identification badge or device with the employee's name and title shown *on the identification badge or device*. The *department* may authorize uniform dress for *department* employees engaged in *such* enforcement."

Section 48. Section 32-1638, R.C.M. 1947, is renumbered 32-1631.1 and is amended to read as follows:

**"32-1631.1. Definition of public highways.** *In sections 32-1632 through 32-1641, the term "public highways" means "highways" as defined in section 32-2114.*"

Section 49. Section 32-1639, R.C.M. 1947, is amended to read as follows:

**"32-1639. Offenses for which arrest authorized.** *Employees appointed under section 32-1632 may* make arrests for violations of the following statutory provisions only:

- (1) *Sections 32-1123.1 through 32-1130;*
- (2) *Sections 32-3201 through 32-3203;*
- (3) *Title 32, chapter 33;*
- (4) *Title 32, chapter 34;*
- (5) *Section 53-119.1;*
- (6) *Section 84-1833;*
- (7) *Sections 84-1841 through 84-1844;*
- (8) *Sections 84-6601 through 84-6605.*

*These employees may not arrest for violations other than specified in this section."*

Section 50. Section 32-1640, R.C.M. 1947, is amended to read as follows:

**"32-1640. Co-operation with other agencies.** *Such employees of the department shall co-operate with other law enforcement agencies."*

Section 51. Section 32-1641, R.C.M. 1947, is amended to read as follows:

**"32-1641. Duty of authorized employee upon making an arrest — power to fix and accept bail — fees of justices of peace.** *(1) Such employees, upon making an arrest, shall deliver to the offender a form of notice to appear describing the nature of the offense with instructions on the notice to appear for the offender to report to the nearest justice of the peace. The employee may accept a deposit for appearance justifiable for the offense charged. The person arrested may be detained for a reasonable time for the purpose of issuing the notice. If the employee accepts bail, he shall give a signed receipt to the offender setting forth the amount received. The employee shall then deliver the bail money to the justice of the peace before whom the offender is to appear, and the justice of the peace shall give a receipt to the employee for the amount of bail money delivered. After the filing of the complaint and appearance of the defendant, the justice of the peace shall assume jurisdiction and may set and accept further appearance bail bond.*

*(2) For the purpose of sections 32-1632 through 32-1641 only, the fees of justices of the peace in all offenses in which the statutory fine is five dollars (\$5) or less, shall be one dollar (\$1), but if the statutory fine is in excess of five dollars (\$5), the justices of the peace are permitted the fee prescribed by law; no additional fees shall be paid justices of the peace where salaries are fixed by law."*

Section 52. Section 32-2133, R.C.M. 1947, is amended to read as follows:

**"32-2133. Department of highways to adopt sign manual.** *The department of highways shall adopt a manual and specifications for a uniform system of traffic-control devices consistent with this act for use upon highways within the state. This uniform system shall correlate with and so far as possible conform to the system then current as approved by the American association of state highway officials; however, the department shall adopt for use on controlled access highways, the interstate sign manual as adopted by the American association of state highway officials, February 10, 1958, and approved by the United States department of commerce, bureau of public roads, February 21, 1958, and all subsequent amendments relating thereto."*

Section 53. Section 32-2134, R.C.M. 1947, is amended to read as follows:

**"32-2134. Department of highways to sign all state highways.** *(a) The department of highways shall place and maintain traffic-control devices, conforming to its manual and specifications, upon all state highways it considers necessary to indicate and to carry out this act or to regulate, warn, or guide traffic.*



(b) A local authority *may not* place or maintain a traffic-control device upon a highway under the jurisdiction of the *department* except by the latter's permission.

(c) *Only the department may* erect and maintain these traffic-control devices conforming to its manual and specifications on a controlled access highway or controlled access facility. The erection of a sign, marker, or emblem on a controlled access facility or controlled access highway by any other public authority, or agent, or by a private individual, firm or corporation is *unlawful* and a misdemeanor and *punishable* as provided in subsection (e).

(d) The erection or maintenance of a sign, marker, emblem or traffic-control device on a state highway except a controlled access highway or controlled access facility, is subject to the rules, regulations, and specifications the *department adopts* and *publishes* in the interest of public safety and convenience.

(e) The erection of a sign, emblem, marker or traffic-control device in violation of this section is a misdemeanor, punishable by a fine of not less than twenty-five dollars (\$25) nor more than three hundred dollars (\$300).

(f) An unauthorized sign, emblem, marker or traffic-control device or portion thereof encroaching into, over, or upon a right of way of a state highway, or controlled access highway is a public nuisance, and the *department may* remove it or cause it to be removed without notice and without liability for the removal."

Section 54. Section 32-2134.3, R.C.M. 1947, is amended to read as follows:

"32-2134.3. **Posting of act along highways.** *The department of highways shall* post notices of this act, and the penalties provided for, at locations designated by the *department*."

Section 55. Section 32-2144, R.C.M. 1947, is amended to read as follows:

"32-2144. **Speed restrictions — basic rule.** (a) A person operating or driving a vehicle of any character on a public highway of this state shall drive it in a careful and prudent manner, and at a rate of speed no greater than is reasonable and proper under the conditions existing at the point of operation, taking into account the amount and character of traffic, condition of brakes, weight of vehicle, grade and width of highway, condition of surface, and freedom of obstruction to view ahead, and he shall drive it so as not to unduly or unreasonably endanger the life, limb, property, or other rights of a person entitled to the use of the street or highway.

(b) Where no special hazard exists that requires lower speed for compliance with paragraph (a) of this section, the speed of a vehicle not in excess of the limits specified in this section or established as authorized in sections 32-2145, 32-2146, 32-2147, and 32-2149 is lawful, but a speed in excess of those limits is unlawful:

1. Twenty-five (25) miles per hour in an urban district;

2. Thirty-five (35) miles per hour on *a highway* under construction or *repair*;

3. Fifty-five (55) miles per hour in other locations during the nighttime, except that the nighttime speed limit on completed sections of interstate highways is sixty-five (65) miles per hour.

"Daytime" means from a half ( $\frac{1}{2}$ ) hour before sunrise to a half ( $\frac{1}{2}$ ) hour after sunset. "Nighttime" means at any other hour.

The speed limits set forth in this section may be altered *by the highway commission* as authorized in sections 32-2145, 32-2146, and 32-2149.

(c) The driver of a vehicle shall, consistent with paragraph (a), drive at an appropriate reduced speed when approaching and crossing an intersection or railway grade crossing, when approaching and going around a curve, when approaching a hill crest, when traveling upon a narrow or winding roadway, and when a special hazard exists with respect to pedestrians or other traffic or by reason of weather or highway condition."

Section 56. Section 32-2145, R.C.M. 1947, is amended to read as follows:

"32-2145. **Establishment of special speed zones.** (1) *If the department of highways determines upon the basis of an engineering and traffic investigation that a speed limit set by section 32-2144 is greater or less than is reasonable or safe under the conditions found to exist at an intersection, curve, dangerous location, or any other part of a highway under its jurisdiction, the commission may set a reasonable and safe special speed limit at that part.*

(2) *The department shall erect and maintain appropriate signs giving notice of these special limits. When they are erected, the limits are effective at that part at all times, or at other times the commission sets.*

(3) *The authority of the commission under this section includes the authority to set reduced nighttime speed limits on curves and other dangerous locations.*

(4) *This section does not authorize the commission to set a state-wide speed limit."*

Section 57. Section 32-2146, R.C.M. 1947, is amended to read as follows:

"32-2146. **When local authorities may and shall alter limits.** (a) *If a local authority in its jurisdiction determines on the basis of an engineering and traffic investigation that the speed permitted under this act is greater or less than is reasonable and safe under the conditions found to exist upon a highway or part of a highway, the local authority may set a reasonable and safe limit thereon which:*

1. *Decreases the limit at intersection; or*
2. *Increases the limit within an urban district, but not to more than fifty-five (55) miles per hour during the nighttime; or*
3. *Decreases the limit outside an urban district, but not to less than thirty-five (35) miles per hour.*

(b) *A local authority in its jurisdiction shall determine by an engineering and traffic investigation the proper speed for all arterial streets and shall set a reasonable and safe limit thereon which may be greater or less than the speed permitted under this act for an urban district.*

(c) *An altered limit established as authorized under this section is effective at all times or at other times determined by the authority when appropriate signs giving notice of the altered limit are erected upon the highway.*

(d) *The commission has exclusive jurisdiction to set special speed limits on all federal-aid highways or extensions thereof in all municipalities or urban areas. The commission shall set these limits in accordance with section 32-2145."*

Section 58. Section 32-2147, R.C.M. 1947, is amended to read as follows:

"32-2147. **Minimum speed regulations.** (a) *A person may not drive a motor vehicle at a speed slow enough to impede or block the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation or in compliance with law.*

On a two-lane highway where passing is unsafe because of traffic in the opposite direction or other conditions, a slow-moving vehicle, including a passenger vehicle, behind which four (4) or more vehicles are formed in line, shall turn off the roadway at the nearest place designated as a turnout by signs erected by the authority having jurisdiction over the highway, or wherever sufficient area for a safe turnout exists, in order to permit the vehicles following it to proceed. As used in this section a slow-moving vehicle is one which is proceeding at a rate of speed less than the normal flow of traffic at the particular time and place. The department of highways is authorized to designate and construct such turnouts and to erect signs at appropriate places advising motorists of this statute.

(b) *If the department of highways or local authorities within their respective jurisdictions determine on the basis of an engineering and traffic investigation that slow speeds on any part of a highway consistently impede the normal and reasonable movement of traffic, the commission or the local authority may set a minimum speed limit below which a person may not drive a vehicle except when necessary for safe operation or in compliance with law."*

Section 59. Section 32-2149, R.C.M. 1947, is amended to read as follows:

"32-2149. **Special speed limitations.** (a) *A person may not drive a vehicle equipped with solid rubber or cushion tires at a speed greater than ten (10) miles per hour.*

(b) *A person may not drive a vehicle over a bridge or other elevated structure constituting a part of a highway at a speed which is greater than the maximum speed which can be maintained with safety to the bridge or structure, when the structure is signposted as provided in this section.*

(c) The *department of highways* upon request from a local authority may, or upon its own initiative shall, conduct an investigation of a bridge or other elevated structure constituting a part of a highway, and if it *finds on investigation* that *the* structure cannot *safely* withstand vehicles traveling at the speed otherwise permissible under this act, the *commission* shall *set* the maximum speed of vehicles which *the* structure can withstand, and *the department* shall *erect and maintain* suitable signs stating *the* maximum speed at a distance of not less than one hundred (100) feet before each end of *the* structure.

(d) Upon the trial of a person charged with a violation of this section, proof of *the setting* of the maximum speed by *the commission* and the existence of *the* signs is conclusive evidence of the maximum speed which can be maintained with safety to *the* bridge or structure."

Section 60. Section 32-2157, R.C.M. 1947, is amended to read as follows:

**"32-2157. No-passing zones.** (a) The *department of highways may* determine those portions of a highway where overtaking and passing or driving to the left of the roadway would be especially hazardous, and *it* may by appropriate signs or markings on the roadway indicate the beginning and end of *these* zones. *When the* signs or markings are in place and clearly visible to an ordinarily observant person, every driver of a vehicle shall obey the directions of *those signs*.

(b) Where signs or markings are in place to define a no-passing zone as set forth in paragraph (a) a driver *may not* drive on the left side of the roadway within *the* no-passing zone or on the left side of a pavement striping designed to mark *the* no-passing zone throughout its length."

Section 61. Section 32-2158, R.C.M. 1947, is amended to read as follows:

**"32-2158. One-way roadways and rotary traffic islands.** (a) The *department of highways* may designate a highway or a separate roadway under its jurisdiction for one-way traffic and shall erect appropriate signs giving notice of *that designation*.

(b) Upon a roadway designated and signposted for one-way traffic a vehicle *may* be driven only in the direction designated.

(c) A vehicle passing around a rotary traffic island *may* be driven only to the right of such island."

Section 62. Section 32-2163, R.C.M. 1947, is amended to read as follows:

**"32-2163. Restrictions on use of controlled access roadway.** (1) *The department of highways may by rule and local authorities may by ordinance prohibit the use of a controlled access highway under their respective jurisdictions by pedestrians, bicycles or other nonmotorized traffic or by a person operating a motor driven cycle.*

(2) The *department* or the local authority *which adopts the* prohibitory regulation shall erect and maintain official signs on the controlled access

roadway on which *these* regulations are applicable. *It is unlawful for a person to violate the restrictions stated on those signs.*"

Section 63. Section 32-2174, R.C.M. 1947, is amended to read as follows:

"32-2174. **Vehicles approaching "Yield" sign.** When the intersection is designated by the *department of highways*, or the local authority having jurisdiction, as a "Yield" intersection, the driver of a vehicle approaching the "Yield" sign shall slow to a speed of not more than fifteen (15) miles per hour and yield right of way to all vehicles approaching from the right or left on the intersecting roads, or streets, which are so close as to constitute an immediate hazard. If a driver is involved in a collision at an intersection or interferes with the movement of other vehicles after driving past a "Yield" sign, such collision or interference shall be deemed evidence of the driver's failure to yield right of way."

Section 64. Section 32-2192, R.C.M. 1947, is amended to read as follows:

"32-2192. **All vehicles must stop at certain railroad grade crossings.** The *department of highways* and local authorities *may* designate particularly dangerous highway grade crossings of railroads and erect stop signs *at these crossings*. When *these* stop signs are erected, the driver of a vehicle shall stop within fifty (50) feet but not less than fifteen (15) feet from the nearest rail of *the* railroad and shall proceed only upon exercising due care."

Section 65. Section 32-2195, R.C.M. 1947, is amended to read as follows:

"32-2195. **Vehicles must stop at stop signs.** (a) The *department of highways* with reference to state highways and local authorities with reference to other highways under their jurisdiction may designate through highways and erect stop signs at specified entrances *to these highways* or may designate *an* intersection as a stop intersection and erect *similar* signs at one (1) or more entrances to *that* intersection.

(b) *The* sign shall bear the word "Stop" in letters not less than eight (8) inches in height, and *it* shall be *made* luminous *at nighttime* by steady or flashing internal illumination, or by a fixed floodlight projected on the face of the sign, or by efficient reflecting elements on the face of the sign.

(c) *The* stop sign shall be erected as near as practicable to the nearest line of the crosswalk on the near side of the intersection or, if there is no crosswalk, then as close as practicable to the nearest line of the roadway.

(d) A driver of a vehicle approaching a stop sign shall stop before entering the crosswalk on the near side of the intersection, or in the event there is no crosswalk, *he* shall stop at a clearly marked stop line, but if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the intersection except when directed to proceed by a police officer or highway patrolman or traffic-control signal."

Section 66. Section 32-21-102, R.C.M. 1947, is amended to read as follows:

"32-21-102. **Additional parking regulations.** (a) Except as otherwise provided in this section, a vehicle stopped or parked upon a roadway where there are adjacent curbs shall be stopped or parked with the right-hand wheels of the vehicle parallel to and within eighteen (18) inches of the right-hand curb.

(b) A local authority may by ordinance permit parking of a vehicle with the left-hand wheels adjacent to and within eighteen (18) inches of the left-hand curb of a one-way roadway.

(c) A local authority may by ordinance permit angle parking on a roadway, except that angle parking shall not be permitted on any federal-aid or state highway unless the department of highways determines that the roadway is of sufficient width to permit angle parking without interfering with the free movement of traffic.

(d) The department with respect to highways under its jurisdiction may place signs prohibiting or restricting the stopping, standing, or parking of vehicles on a highway where in its opinion this stopping, standing, or parking, is dangerous to those using the highway or where the stopping, standing, or parking of vehicles would unduly interfere with the free movement of traffic on it. These signs shall be official signs, and a person may not stop, stand, or park a vehicle in violation of the restrictions stated on these signs."

Section 67. Section 32-21-149, R.C.M. 1947, is amended to read as follows:

"32-21-149. **Restrictions as to tire equipment.** (a) A solid rubber tire on a vehicle shall have rubber on its entire traction surface at least one (1) inch thick above the edge of the flange of the entire periphery.

(b) A person may not operate or move on a highway a motor vehicle, trailer, or semitrailer having a metal tire in contact with the roadway.

(c) A tire on a vehicle moved on a highway may not have on its periphery a block, stud, flange, cleat, or spike or other protuberance of a material other than rubber which projects beyond the tread of the traction surface of the tire, except that it is permissible to use farm machinery with tires having protuberances which will not injure the highway. It is also permissible to use tire chains of reasonable proportions or pneumatic tires, the traction surfaces of which have been embedded with material such as wood, wire, plastic or metal, which may not protrude more than one-sixteenth (1/16) of an inch beyond the tire tread, upon a vehicle when required for safety because of snow, ice, or other conditions tending to cause a vehicle to skid. The use of pneumatic tires embedded as provided in this section is permitted only between the first day of October and the last day of May of each year, except that one (1) of those tires may be used for a spare in case of tire failure. School buses equipped with such embedded pneumatic tires may operate from August 15 through the following June 15.

(d) The department of highways and local authorities in their respec-

tive jurisdictions may in their discretion issue special permits authorizing the operation upon a highway of *farm tractors or other farm machinery, or of* traction engines or tractors having movable tracks with transverse corrugations upon the periphery of *the* movable tracks, the operation of which upon the highway would otherwise be prohibited under this act.

(e) A person violating this *section* is guilty of a misdemeanor."

Section 68. Section 32-2202, R.C.M. 1947, is amended to read as follows:

"32-2202. **Legislative policy and intent.** Consistent with the foregoing determinations and declarations the legislative assembly intends:

(1) To place a high degree of trust in the hands of those officials whose duty it is, within the limits of available funds, to plan, develop, operate, maintain and protect the highway facilities of this state for present as well as for future use.

(2) To make the *department of highways* custodian of the federal-aid and state highways, and to impose similar responsibilities upon the boards of county commissioners with respect to county roads and upon municipal officials with respect to the streets under their jurisdiction.

(3) That the state shall have integrated systems of highways, roads, and streets, and that the *department of highways*, the counties and municipalities assist and co-operate with each other to that end.

(4) To provide sufficiently broad authority to enable the highway officials at all levels of government to function adequately and efficiently in all areas of their respective responsibilities, subject to the limitations of the constitution and the legislative mandate hereinafter imposed."

Section 69. Section 32-2203, R.C.M. 1947, is amended to read as follows:

"32-2203. **General definitions.** Subject to additional definitions contained in this *title* which are applicable to specific chapters or *sections*, and unless the context otherwise requires, terms are defined as follows:

(1) "Abandonment" — Cessation of use of right of way (easement) or activity thereon with no intention to reclaim or use again. (Sometimes called "vacation.")

(2) "Auditor" — County auditor.

(3) "Board" — Board of county commissioners.

(4) "Bridge" — Includes rights of way or other interest in land, abutments, superstructures, piers, and approaches except dirt fills.

(5) "Clerk" — County clerk and recorder.

(6) "Commission" — *Highway commission provided for in section 82A-706.1.*

(7) "Committee" — Local improvement district committee of supervisors.

(8) "Condemnation" — Taking by exercise of the right of eminent domain.

(9) "Construction"—Supervising, inspecting, actual building, and all expenses incidental to the construction or reconstruction of a highway, including locating, surveying, and mapping, costs of right of way or other interests in land and elimination of hazards at railway-grade crossings.

(10) "Control of access" — The condition in which the right of owners or occupants of abutting land or other persons to access, light, air, or view in connection with a highway is fully or partially controlled by public authority.

(11) "County road" — Any public highway opened, established, constructed, maintained, abandoned, or discontinued in accordance with *chapters 31 and 40* of this title.

(12) "Department" — *Department of highways provided for in Title 82A, chapter 7.*

(13) "Director" — *Director of highways, a position provided for in section 82A-701.*

(14) "Easement" — A right acquired by public authority to use or control property for a designated purpose.

(15) "Eminent domain" — The right of the state to take private property for public use.

(16) "Federal-aid highway" — Any public highway which is a portion of any of the federal-aid highway systems.

(17) "Federal-aid highway systems" — All of the systems named hereafter and their urban extensions.

(18) "Federal-aid interstate system" — That system of public highway selected by the commission in co-operation with adjoining states, subject to the approval of the secretary of commerce as provided in the Federal Highway Act, as amended.

(19) "Federal-aid primary system" — That system of connected public highways designated by the commission subject to the approval of the secretary of commerce, as provided in the Federal Highway Act, as amended.

(20) "Federal-aid secondary system" — That system of public highways not on the federal-aid primary or interstate systems selected by the commission in co-operation with the boards of county commissioners, subject to the approval of the secretary of commerce, as provided in the Federal Highway Act, as amended.

(21) "Fee simple" — An absolute estate or ownership in property including unlimited power of alienation.

(22) "Highway" — Includes rights of way or other interests in land, embankments, retaining walls, culverts, sluices, drainage structures, bridges, railroad-highway crossings, tunnels, signs, guardrails, and protective structures.



(23) "Highway," "road," "street" — Whether they appear together or separately or are preceded by the adjective "public," these are general terms denoting a public way for purposes of vehicular travel, including the entire area within the right of way.

(24) "Highway authority (ies)" — The entity (ies) at any level of government authorized by law to construct and maintain highways.

(25) "Maintenance" — Preservation of the entire highway, including surface, shoulders, roadsides, structures, and such traffic-control devices as are necessary for its safe and efficient utilization.

(26) "Public highways" — All streets, roads, highways, bridges, and related structures, which have been or shall be:

(a) Built and maintained with appropriated funds of the United States or the state or any political subdivision thereof.

(b) Dedicated to public use.

(c) Acquired by eminent domain.

(d) Acquired by adverse user by the public, jurisdiction having been assumed by the state or any political subdivision thereof.

(27) "Right of way" — A general term denoting land, property, or any interest therein, usually in a strip, acquired for or devoted to highway purposes.

(28) "State highway" — Any public highway planned, laid out, altered, constructed, reconstructed, improved, repaired, maintained, or abandoned by the *department*.

(29) "Superintendent" — County road superintendent.

(30) "Supervisor" — County road supervisor.

(31) "Surveyor" — County surveyor.

(32) "Toll bridge" — Any bridge constructed by the *department*, together with all appurtenances, additions, alterations, improvements, replacements, and the approaches thereto, lands used therefor, and improvements thereon.

(33) "Treasurer" — County treasurer."

Section 70. Section 32-2301, R.C.M. 1947, is amended to read as follows:

"32-2301. **Classification — highways and roads.** (1) Public highways of this state are classed as follows:

(a) Federal-aid highways

(b) State highways

(c) County roads

(d) City streets.

(2) All highways which are not designated, selected, *or* established, by *the commission* constructed or maintained by the *department* are county roads or city streets.

(3) County roads are those opened, established, constructed, maintained, changed, abandoned, or discontinued, in accordance with *chapters 31 and 40* of this title.

(4) City streets are those public highways under the jurisdiction of municipal officials."

Section 71. Section 32-2401, R.C.M. 1947, is amended to read as follows:

"32-2401. **Assent to federal-aid acts.** (1) The legislative assembly, for and on behalf of the state of Montana, assents to the provisions of the Federal-Aid Road Act, approved July 1, 1916, and the Federal Highway Act, approved November 9, 1921, and all amendments thereto.

(2) The *department* may, for and on behalf of the state, enter into all contracts and agreements with the United States or any officer, department, or bureau thereof relating to the construction, reconstruction, repair, and maintenance of highways in the state.

(3) The *department* may make all rules necessary to comply with the provisions of the acts assented to, and all other acts granting aid for public highways, and to obtain for the state the full benefits of such acts.

(4) The *department* may do all other things necessary or required to carry out fully the co-operation contemplated by the acts of Congress assented to."

Section 72. Section 32-2402, R.C.M. 1947, is renumbered 82A-706.1, and is amended to read as follows:

"82A-706.1. **Highway commission.** (1) (a) The highway commission consists of five (5) members. *One (1) member shall be a bona fide resident of and appointed from each of these districts, each composed of the counties named:*

(i) *District 1. Lincoln, Flathead, Sanders, Lake, Mineral, Missoula, Ravalli, Granite, Lewis and Clark, Jefferson, Broadwater.*

(ii) *District 2. Powell, Deer Lodge, Silver Bow, Beaverhead, Madison, Gallatin, Meagher, Wheatland, Park, Sweet Grass.*

(iii) *District 3. Glacier, Toole, Liberty, Hill, Blaine, Pondera, Teton, Chouteau, Cascade, Judith Basin.*

(iv) *District 4. Fergus, Petroleum, Garfield, Phillips, Valley, McCone, Prairie, Dawson, Wibaux, Richland, Roosevelt, Daniels, Sheridan.*

(v) *District 5. Golden Valley, Stillwater, Carbon, Big Horn, Yellowstone, Musselshell, Rosebud, Treasure, Custer, Powder River, Carter, Fallon.*

(b) *No two (2) members may at the time of appointment or thereafter during their respective terms of office be residents of the same district.*

(c) *Not more than three (3) members may at the time of appointment or thereafter during their respective terms be members of the same political party.*

(d) *No elective state official or state officer during the term of office to which he was elected or appointed and no state employee may be a member of the commission.*

(2) *No resolution, motion, or other decision of the commission may be adopted or passed without the favorable vote of at least three (3) members.*

(3) *The commission is allocated to the department for administrative purposes only as prescribed in section 82A-108.*

(4) *The commission is designated as a quasi-judicial board for purposes of section 82A-112. However, members of the commission on December 15, 1971, shall serve for the remainder of their terms."*

Section 73. Section 32-2404, R.C.M. 1947, is amended to read as follows:

**"32-2404. Commission members — bond — meetings.** (1) Each member of the highway commission shall give bond conditioned for the faithful performance of his duties in the sum of ten thousand dollars (\$10,000).

(2) *The commission shall meet at least once each month for the purpose of transacting business."*

Section 74. Section 32-2406, R.C.M. 1947, is amended to read as follows:

**"32-2406. General power of department.** The department may plan, lay out, alter, construct, reconstruct, improve, repair, maintain, and the commission may abandon highways on the federal-aid systems and state highways. The department may co-operate and contract with counties and municipalities to provide assistance in performing these functions on other highways and streets."

Section 75. Section 32-2407, R.C.M. 1947, is amended to read as follows:

**"32-2407. Commission to designate highways — rules of department.** (1) The commission shall designate such public highways in the state as shall be classed as the federal-aid primary system.

(2) The commission shall in co-operation with the board of county commissioners, select such public highways in the state as shall be classed as the federal-aid secondary system, taking into consideration the traffic count on those highways, the continuity of the highways in relation to the state highway systems as they may connect or tie into a unified system of federal-aid highways, and the taxable valuations which are affected by those public highways.

(3) The commission shall, in co-operation with adjoining states, select the routes of the federal-aid interstate system.

(4) The commission shall designate such public highways in the state

as shall be classed as state highways, and *the department shall adopt* necessary rules for the construction, repair, maintenance, and marking of state highways and bridges."

Section 76. Section 32-2408, R.C.M. 1947, is amended to read as follows:

"32-2408. **Designation of highways not located entirely within the state.** (1) The commission may designate highways subject to improvement under the provisions of the Federal-Aid Road Act, approved July 11, 1916, the Federal Highway Act, approved November 9, 1921, and all amendments thereto, even though *those* highways are not located entirely and continuously within the boundaries of the state. *The* designations shall meet the following conditions:

(a) That the highway is on an approved federal-aid route and eligible for improvement under the federal-aid acts.

(b) That the location of a portion of the route outside the boundaries of the state is necessary because of natural geographical or physical conditions which make the construction of the highway within the state impossible or impracticable.

(c) That the portion of the route located outside the state does not connect with and is not a part of the state highway system of the adjoining state.

(2) *The department* may expend funds for the construction, reconstruction, engineering, administration, betterment, and maintenance of *these designated* highways. It may do all things necessary or required to carry out fully the co-operation contemplated under the federal-aid acts with regard thereto."

Section 77. Section 32-2409, R.C.M. 1947, is amended to read as follows:

"32-2409. **Duties of commission and department — reports.**

(1) The commission *may adopt* rules necessary for its government.

(2) *The department shall:*

(a) Maintain and preserve *the* records of *the commission* in its office at the capitol.

(b) *File and preserve copies* of all plans, specifications, contracts, estimates, and official acts *taken by it or by the commission*.

(c) Prepare and submit to the governor on or before the fifteenth day of each month a report of work constructed, under construction, and proposed for construction, the progress made during the preceding month, and recommendation for improvements and their estimated costs."

Section 78. Section 32-2410, R.C.M. 1947, is amended to read as follows:

"32-2410. **Compilation of statistics — investigation — consultation.** (1) *The department* shall compile statistics regarding public highways throughout the state and collect all related information deemed expedient.

(2) It shall investigate various methods of construction adapted to different sections of the state, and decide the best methods of construction and maintenance of highways, bridges, and road markers.

(3) The *department* may be consulted at all reasonable times by county officers having care and authority over highways and bridges and shall advise them on construction, repair, alteration, or maintenance.

(4) The *department* shall furnish such information and advice as may be requested by persons interested in the construction, maintenance, and marking of public highways. *It* shall at all times lend *its* aid in promoting highway improvement throughout the state."

Section 79. Section 32-2411, R.C.M. 1947, is amended to read as follows:

**"32-2411. Agreements concerning effects of weight on highways.**

(1) The *department* may contract with the United States or any state or group of states, or agencies thereof, or any nonprofit association, on a joint or co-operative basis, to study, analyze, or test the effects of weights on highways. Studies or tests shall seek solutions to the problems connected with the imposition of motor vehicle weights on highways.

(2) Studies or tests may be made either by designating existing highways or by constructing test strips, including natural resource roads."

Section 80. Section 32-2412, R.C.M. 1947, is amended to read as follows:

**"32-2412. Seeding along highways.** (1) After a federal-aid or state highway is constructed, the *department* shall seed borrow pits, slopes and shoulders to an adaptable perennial grass or combination of perennial grasses and legumes whenever establishment of perennial grass covers seem suitable. The seed shall be certified.

(2) The *department* shall seek joint recommendations and specifications as to time and method of seeding, fertilizing practices and grass species from the Montana extension service, the experiment station, and the soil conservation service."

Section 81. Section 32-2413, R.C.M. 1947, is amended to read as follows:

**"32-2413. Description and plan of new highway or reconstructed or controlled access facility — recording.** (1) Whenever the *department establishes* the location, width, and lines of any new, reconstructed, or proposed highway, or *the commission designates* a road, street or highway as a controlled access facility, *the department* shall make a description and plan showing the center line and the established width, the immediate boundary lines of all private property over, across or through which *the highway passes*, the name or names of the owner *of the property*, the boundaries of that part of *the private ownership* included within the right of way of *the highway*, and the parcel number assigned to that part of each ownership included within *the highway right of way*, together with the project number under which *the highway is* or is proposed to be constructed or reconstructed.

(2) *Reference* to the project number, parcel number, and section, or quarter section, tract, block or lot from which the same has been subdivided is valid description of *the* parcel in all deeds given to or received from the state *in which* a parcel is transferred."

Section 82. Section 32-2414, R.C.M. 1947, is amended to read as follows:

**"32-2414. Relocation of utilities facilities — hearings — order.**

(1) After appropriate hearings, the *department* may *adopt* reasonable regulations for the installation, construction, maintenance, repair, renewal, or relocation of tracks, pipes, mains, conduits, cables, wires, towers, poles, and other equipment and appliances (hereafter called "facilities") of *a* utility in, on, along, over, across, through or under *a* project on any of the federal-aid systems.

(2) The *department* shall give written notice of the place and time of a public hearing to determine the necessity of *a* relocation of facilities to all concerned not less than twenty (20) days before the hearing. Hearing may be waived in writing by the utility concerned or other interested parties.

(3) After the hearing, the *department* may determine that *the* facilities must be relocated. If so, the utility owning or operating the facilities shall relocate them in accordance with the order of the *department*. The utility and its successors and assigns may maintain and operate the relocated facilities, with the necessary appurtenances, in the new location."

Section 83. Section 32-2415, R.C.M. 1947, is amended to read as follows:

**"32-2415. Relocation — costs.** Seventy-five per cent (75%) of all costs of relocation, including the costs of acquisition of new right of way, of dismantling, and of removal, shall be paid by the *department* as a cost of highway construction."

Section 84. Section 32-2419, R.C.M. 1947, is amended to read as follows:

**"32-2419. Ports of entry and checking stations authorized.** To augment and help make more efficient and effective the enforcement of certain laws of the state, the *department* shall establish temporary or permanent ports of entry or checking stations upon highways in the state at places *which* the *department* considers necessary and advisable."

Section 85. Section 32-2420, R.C.M. 1947, is amended to read as follows:

**"32-2420. Checking stations required at major points of entry into state.** In addition to the power granted to *it* in section 32-2419, *the department* shall establish checking stations at convenient points on the major highways entering this state, and *the* checking stations shall be kept open at all times."

Section 86. Section 32-2421, R.C.M. 1947, is amended to read as follows:

**"32-2421. Co-operation in use of ports of entry and checking stations.** The *department* shall co-operate with other agencies *and political subdivisions* of this state in the use of *the* ports of entry or checking stations, so that maximum use can be made of *the* facilities in enforcement of the laws of this state."

Section 87. Section 32-2422, R.C.M. 1947, is amended to read as follows:

**"32-2422. Purposes of act.** *The purpose of sections 32-2422 through 32-2425 is:*

(1) To promote the safety, convenience and enjoyment of travel on, and protection of the public investment in the highways of this state.

(2) To restore, preserve and enhance scenic beauty within the right of way of and adjacent to *the* highways.

(3) To entitle the state to receive and expend the three per *cent* (3%) nonmatching funds from the United States *under* Title 23, United States Code."

Section 88. Section 32-2423, R.C.M. 1947, is amended to read as follows:

**"32-2423. Purposes for which federal funds to be expended.** The *department may* expend funds apportioned to the state under Public Law 89-285, Title III, Section 301 (a), October 22, 1965, 79 Statute 1032, for the following purposes:

(a) For landscape and roadside development within the rights of way of federal-aid highways of this state;

(b) For acquisition of interests in and improvement of strips of land necessary for the restoration, preservation, and enhancement of scenic beauty adjacent to *the* highways; and

(c) For acquisition and development of publicly owned and controlled rest and recreation areas and sanitary and other facilities within or adjacent to federal-aid highway rights of way reasonably necessary to accommodate the traveling public."

Section 89. Section 32-2424, R.C.M. 1947, is amended to read as follows:

**"32-2424. Extent of interest acquired.** The *department may* acquire the fee simple or any lesser estate or interest as determined by *it* to be reasonably necessary to accomplish the purposes of *section 32-2422 through 32-2425*. *Acquisition may* be made by gift, purchase, or exchange."

Section 90. Section 32-2425, R.C.M. 1947, is amended to read as follows:

**"32-2425. Expenditure of funds.** The *department shall* expend only nonmatching funds authorized under section 319 (b) of the Federal Highway Beautification Act of 1965, as amended, in carrying out the authority granted by *sections 32-2422 through 32-2424*."

Section 91. Section 32-2426, R.C.M. 1947, is amended to read as follows:

**"32-2426. Department to fence along state highways through open range where livestock a hazard — gates — "open range" defined.** (1) The *department* shall fence the right of way of any part of the state highway system that is constructed or reconstructed, after July 1, 1969, through open range where livestock present a hazard to the safety of the motorist. Where a fence is constructed, adequate stock gates or stock passes, as necessary, shall be provided to make land on either side of the highway usable for livestock purposes.

(2) In sections 32-2426 and 32-2427 "open range" means all private and public lands in the state not inclosed by a fence of not less than four (4) wires in good repair, but does not include herd districts as created and defined by section 46-1501."

Section 92. Section 32-2427, R.C.M. 1947, is amended to read as follows:

**"32-2427. Department to designate areas where fencing needed.** The *department* shall designate the open range areas where livestock present a sufficient safety hazard to the motorist to warrant fencing by the *department*."

Section 93. There is a new section to be numbered 32-2504, R.C.M. 1947, which reads as follows:

**32-2504. Board of highway appeals — hearings.** The board of highway appeals, provided for in section 82A-704, shall hear grievances of personnel of the department of highways. An employee of the department who has a grievance and who has exhausted all other administrative remedies within the department, is entitled to a hearing before the board for a resolution of the grievance. A grievance of an employee means an employee's dissatisfaction concerning a serious matter of his employment based upon work conditions, supervision, or the result of an administrative action.

Section 94. Section 32-2601, R.C.M. 1947, is amended to read as follows:

**"32-2601. Distribution and use of proceeds of gasoline dealers' license tax.** (1) All money received in payment of license taxes under the *Distributor's Gasoline License Tax Act*, except those amounts paid out of the *department of revenue's* suspense account for gasoline tax refund, shall be used and expended as provided in this section. So much of *that* money on hand at any time as may be needed to pay highway bonds and interest thereon when due and to accumulate and maintain a reserve therefor, as provided in laws and in resolutions of the state board of examiners authorizing such bonds, shall be deposited in the highway bond account in the sinking fund established by section 79-410. The legislative assembly hereby finds as a fact that the principal and interest and reserve requirements of bonds so authorized are a necessary cost of administering laws under which gasoline license taxes are derived, payment of highway obligations, and cost of construction, reconstruction, maintenance and



repair of public highways, roads, streets, and bridges. Subject to *that* provision, six-tenths of one per cent (.6%) of all money shall be deposited in the state park account in the earmarked revenue fund. All of the remainder of *the* money shall be used and expended by the *department of highways* on the federal-aid highways in this state selected and designated under the Federal-Aid Act, approved July 11, 1916, and the Federal Highway Act, approved November 9, 1921, and all amendments thereto, and on highways leading from each county seat in the state to *the* federal highway system of federal-aid roads where *the* county seat is not on *the* system, and on *the* other roads *which* have been or may be authorized by the laws of Montana, and for collection of the license taxes and the enforcement of the Montana highway code, *under* article *VIII*, section *6* of the constitution of *this* state. *The department shall*, in expending *this* money, carry forward construction from year to year, using the money expended through the matching up of federal-aid allotments to Montana upon the federal highway system in the various parts of the state in accordance with sections 32-2605 through 32-2607; nothing in this act *conflicts* with *those* federal-aid highway acts and the rules by which they are administered. The *department may* enter into co-operative agreements with the national park service and the *federal highway administration* for the purpose of maintaining national park approach roads in Montana.

(2) Money credited to the state park account in the earmarked revenue fund shall be used only for the creation, improvement, and maintenance of state parks where motor boating is allowed, except for the payment of refunds *under* section *84-1855*. The legislative assembly hereby finds as a fact that of all the fuel sold in the state for consumption in internal combustion engines, not less than six-tenths of one per cent (.6%) is used for propelling boats on waterways of this state."

Section 95. Section 32-2603, R.C.M. 1947, is amended to read as follows:

"32-2603. **Districts for apportionment of department funds.** All money available to the *department* for highway construction purposes shall be apportioned among these financial districts, each composed of the counties named:

- District 1. Lincoln, Flathead, Lake.
- District 2. Glacier, Toole, Liberty, Hill, Blaine.
- District 3. Phillips, Valley, Daniels, Sheridan, Roosevelt.
- District 4. McCone, Richland, Dawson, Prairie, Wibaux.
- District 5. Fergus, Garfield, Petroleum.
- District 6. Pondera, Teton, Chouteau, Cascade, Judith Basin.
- District 7. Lewis and Clark, Jefferson, Broadwater.
- District 8. Sanders, Mineral, Missoula, Ravalli, Granite, Powell.
- District 9. Beaverhead, Deer Lodge, Silver Bow, Madison.
- District 10. Park, Gallatin, Sweet Grass, Meagher, Wheatland.

District 11. Golden Valley, Musselshell, Stillwater, Yellowstone, Carbon, Big Horn, Treasure.

District 12. Rosebud, Custer, Fallon, Powder River, Carter."

Section 96. Section 32-2604, R.C.M. 1947, is amended to read as follows:

"32-2604. **Construction or reconstruction of bridges.** (1) The *department* may allocate from state construction moneys available for the federal-aid highway system up to one million dollars (\$1,000,000) in any fiscal year for the construction or reconstruction of any major bridge or system of bridges on the primary or secondary highway systems. This may be done only when the use of regularly apportioned funds would prohibit or seriously delay the orderly and necessary highway construction program in the financial districts.

(2) When the *department*, as a part of its finding of public necessity, declares that a particular bridge should be constructed or reconstructed on a designated portion of the primary or secondary highway, the allocation may be made. The allocation may be expended:

(a) On primary bridges when the *department's* estimate of the cost of construction or reconstruction is in excess of five hundred thousand dollars (\$500,000).

(b) On secondary bridges when the *department's* estimate of the state's share of the cost of construction or reconstruction is in excess of the total estimated future regular apportionment of state construction moneys to the federal-aid secondary system of the county or counties for a period of three (3) years.

(3) The allocation shall be made from available state construction moneys for the primary system before the apportionment in section 32-2606, and for the secondary system before the apportionment in section 32-2607."

Section 97. Section 32-2605, R.C.M. 1947, is amended to read as follows:

"32-2605. **Apportionment of state construction funds.** At the beginning of each fiscal year the *department* shall apportion available state construction funds to the various federal-aid highway systems *which are* required to match the amounts of federal aid available for expenditure on each respective system. *The* state's share of the cost of final judgments in court awards made to construction contractors on state highway construction projects during the previous fiscal year may be deducted from funds available prior to the apportionments provided in this section and *this* cost shall be credited to the accounts of the highway system, financial district, county or urban city involved as an offset to the charges made to *the* accounts as a result of *the* final judgment. *The* deductions may be made only when the amount of *these* judgments would prohibit or seriously impair the highway construction program in a financial district, county or urban city."

Section 98. Section 32-2606, R.C.M. 1947, is amended to read as follows:

**"32-2606. Apportionment of state funds to federal-aid primary highway system.** (1) *At the beginning of each fiscal year the department shall determine the amount of incompleted mileage of the federal-aid primary system within each of the financial districts.*

(a) *As a basis for determination of incompleted mileage, the department shall compare the present condition of the system with the latest approved state standards. Any mileage failing to meet those standards shall be included in the determination as partially completed. The proportion of completion shall be determined by estimating the amount of work which must be performed to complete the highway.*

(2) *The department shall then compute the ratio between the incompleted mileage in each district and the total incompleted mileage of the federal-aid primary system in the state.*

(3) *The department shall then apportion available state construction funds to the federal-aid primary system in each district on the basis of the computed ratio."*

Section 99. Section 32-2607, R.C.M. 1947, is amended to read as follows:

**"32-2607. Apportionment of state funds to federal-aid secondary highway system.** (1) *At the beginning of each fiscal year the department shall apportion available state construction funds for the federal-aid secondary highway system among the financial districts. The proportion which each district shall receive shall be computed on the following basis:*

(a) *One-fourth ( $\frac{1}{4}$ ) in the ratio of land area in each district to the total land area in the state.*

(b) *One-fourth ( $\frac{1}{4}$ ) in the ratio of the rural population in each district to the total rural population in the state.*

(c) *One-fourth ( $\frac{1}{4}$ ) in the ratio of the rural road mileage in each district to the total rural road mileage in the state.*

(d) *One-fourth ( $\frac{1}{4}$ ) in the ratio of value of rural lands in each district to the total value of rural lands in the state.*

(2) *Funds apportioned to each district shall be further apportioned to each county in the district on the same basis, considering ratios of land area, rural population, rural road mileage, and value of rural lands. To the extent necessary to permit orderly programming and construction of projects, expenditures in any county may exceed the amount apportioned to that county to the extent of three (3) times the amount of the last apportionment to the county. The amount of any excess expenditures shall be deducted from future apportionments to that county.*

(3) *For the purposes of this section, terms are defined as follows:*

(a) *Rural population — Total population less the population in cities over five thousand (5,000) persons and their unincorporated fringe urban areas as reported in the latest federal census.*

(i) Federal census population figures shall be adjusted in the interim between censuses in accordance with the percentage of change in annual motor vehicle registration figures for each county.

(b) Rural road mileage — All road mileage outside of incorporated cities, exclusive of road mileage on the federal-aid primary highway system and the federal-aid interstate system.

(i) Rural road mileage reported by the road inventory of the *department* shall be used in determining rural road mileage.

(c) Value of rural lands — Includes the value of state-owned lands from which the state derives grazing, timber, and agricultural income.

(i) The basis for the value of rural lands shall be computed from the latest biennial report of the department of revenue.

(ii) The basis for the value of state-owned lands shall be computed from the latest figures on the total grazing, timber, and agricultural lands in each county contained in the latest biennial report of the *department* of state lands.

(iii) The average value of privately owned lands shall be the average value of state-owned lands, if the actual value is not available."

Section 100. Section 32-2608, R.C.M. 1947, is amended to read as follows:

"32-2608. **Secondary highway information.** On or before August 30 of each year, the *department* shall inform each board of county commissioners of:

(1) The total amount of secondary highway funds and the amount apportioned to each county.

(2) The location of proposed secondary highway projects when the information is available.

(3) *Any other matters regarding secondary highway construction which the department considers* advisable and of interest to the counties."

Section 101. Section 32-2609, R.C.M. 1947, is amended to read as follows:

"32-2609. **Apportionment of state funds to federal-aid interstate highway system.** (1) At the beginning of each fiscal year the *department* shall apportion available state construction funds for the federal-aid interstate highway system among the financial districts.

(2) The apportionment shall be based upon the ratio between the estimated cost of constructing or reconstructing the system in each district and the estimated cost of constructing or reconstructing the entire system within the state.

(3) The cost estimates to be used shall be those developed by the *department* in accordance with the Federal-Aid Highway Act of 1956, as amended."

Section 102. Section 32-2610, R.C.M. 1947, is amended to read as follows:

**"32-2610. Increases in expenditures.** (1) The *department* may increase the expenditures made in *a* financial district to the extent of:

(a) Twenty-five per cent (25%) more than the amount of money allocated to *the* district in the latest year for the federal-aid primary system or the federal-aid secondary system.

(b) One hundred per cent (100%) more than the amount of money allocated to *the* district in the latest year for the federal-aid interstate highway system.

(2) The allocation of available state construction funds to *a* district for the next succeeding fiscal year shall be decreased by an amount equal to any increased expenditures."

Section 103. Section 32-2611, R.C.M. 1947, is amended to read as follows:

**"32-2611. Apportionment of state funds to federal-aid urban highways.** (1) At the beginning of each fiscal year the *department* shall apportion state construction funds available for matching federal-aid urban funds to the cities in the state over five thousand (5,000) population in the ratio of urban population in each city to the total urban population in all cities over five thousand (5,000) population in the state.

(2) For the purpose of this section, "urban population" is defined as population within the incorporated limits of cities over five thousand (5,000) population and that population within unincorporated urban fringe areas delineated and reported in the latest federal census.

(3) To the extent necessary to permit orderly programming and construction of projects, expenditures in any city may exceed the amount apportioned to that city. The amount of any excess expenditures shall be deducted from future apportionments to that city."

Section 104. Section 32-2801, R.C.M. 1947, is amended to read as follows:

**"32-2801. Powers and duties of county commissioners respecting county roads.** (1) Each board of county commissioners *has* general supervision over the county roads within the county. The board may, in its discretion, divide the county into suitable road districts, and place each district in charge of a competent road supervisor. The board shall order and direct each supervisor in the work to be done in his district. If the board does not divide the county into districts, the county itself shall constitute one road district.

(2) Each board shall *survey, view, lay out, record, open, work, and maintain* county roads *which* are petitioned for by freeholders. Guideposts shall be erected.

(3) Each board shall discontinue or abandon county roads when freeholders properly petition therefor.

(4) Each board may, in its discretion, *do* whatever may be necessary for the best interest of the county roads and the road districts.

(5) Each board shall make reports relating to roads under its supervision *which are* requested by the *department of highways*."

Section 105. Section 32-2803, R.C.M. 1947, is amended to read as follows:

**"32-2803. Plat books — surveyor — employees.** (1) Each board may, in its discretion, order the county surveyor, or some other surveyor if the county surveyor is incompetent, to prepare suitable plat books. Each board shall have recorded *in it* with the county clerk a full description of each county road, showing each course by bearing and distance, a full and complete map *of the road*, and a record of all proceedings with reference *to the road*.

(2) Each board may, in its discretion, employ a competent road supervisor, who shall serve during the pleasure of the board. Under the direction and control of the board he shall:

(a) Prescribe the times and places for all work to be done on the county roads.

(b) Report any delinquency or inefficiency of any person employed on any road.

(c) Perform other duties *which are* prescribed by the board.

(3) In any county in which the county surveyor is not paid an annual salary, he may by agreement be employed by the board to perform the services of road supervisor. He shall not be paid for any duty otherwise required by law to be performed by him as county surveyor.

(4) In counties without a county surveyor, each board may appoint a county road superintendent. He shall have such duties, powers, and responsibilities as are set forth in chapter 30 of this title."

Section. 106. Section 32-2814, R.C.M. 1947, is amended to read as follows:

**"32-2814. County supervisors to control weeds and exterminate weed seeds — charges.** The board of weed control and weed seed extermination supervisors shall control noxious weeds on the county roads. If the *department* does not control noxious weeds on state and federal highways in any county, the supervisors shall control them. Upon presentation by the supervisors of a verified account of the expenses incurred, the costs *of control* shall be paid by the *department*."

Section 107. Section 32-2815, R.C.M. 1947, is amended to read as follows:

**"32-2815. Board and others to furnish information.** The board and road supervisor of a county, and all other officers who may have the care and supervision of the public highways and bridges, shall, upon the written request of the *department*, furnish all available information in connection with the construction and maintenance of the highways and bridges in their respective districts or counties."

Section 108. Section 32-2901, R.C.M. 1947, is amended to read as follows:

"32-2901. **County to maintain bridges.** Each board shall maintain all public bridges other than those maintained by the *department of highways*."

Section 109. Section 32-3201, R.C.M. 1947, is amended to read as follows:

"32-3201. **Time for payment of fees.** (1) A person who owns or operates a vehicle subject to the fees provided in *sections 32-3301 through 32-3308 and section 32-3310* shall pay the fees provided in this chapter.

(2) Prior to or at the time of registration of *the* vehicle as required under Title 53, or prior to the operation of *the* vehicle on the public highways, fees paid shall be the full amount provided in this chapter unless otherwise provided by law. With respect to vehicles operating on the highways with a current rear windshield sticker issued under the provisions of section 53-109.1 or section 53-109.2, the fees provided in this chapter shall be due and payable at the time of registration.

(3) A person who makes application for license after the first day of July of any year shall pay one-half ( $\frac{1}{2}$ ) of those fees."

Section 110. Section 32-3204, R.C.M. 1947, is amended to read as follows:

"32-3204. **Disposition of fees collected by county treasurer.** At the time of collecting the fees provided for in section 32-3201, each county treasurer shall retain five per cent (5%) of the fees collected by *him* for the cost of administration, and for deposit in the general fund of the county. The remaining ninety-five per cent (95%) shall be remitted monthly to the state treasurer for deposit to the credit of the *department of highways*. The remittance shall be made on forms furnished to the county treasurer by the *department*."

Section 111. Section 32-3205, R.C.M. 1947, is amended to read as follows:

"32-3205. **Deposit of state highway moneys.** (1) Any reference to the state highway fund shall be taken to mean the state highway account in the earmarked revenue fund.

(2) *Moneys* received for the use of the *department* from the receipt or transfer of motor vehicle license fees, as provided by law, or from other state sources shall be deposited in the earmarked revenue fund to the credit of the *department*.

(3) *Moneys* received from the counties and from the federal government or other agencies shall be deposited in the federal and private revenue fund to the credit of the *department*.

(4) Hereafter, moneys collected for the *department* as authorized by law shall be credited to such fund or funds by the state treasurer."

Section 112. Section 32-3302.1, R.C.M. 1947, is amended to read as follows:

**"32-3302.1. Alternative additional fees on truck-trailer combinations.** (1) In addition to other fees for the licensing of vehicles, there may be paid and collected annually instead of the fees provided in section 32-3301, for each motor truck or truck-tractor, based upon the maximum combined gross loaded weight of a truck-tractor with a semitrailer, a truck-tractor with a semitrailer and a full trailer, a motor truck and a trailer, or a motor truck and trailers, as set by the licensee in his application, the following fees:

### Schedule III

Truck-tractor with a semitrailer, a truck-tractor with a semitrailer and a full trailer, a motor truck and a trailer, or a motor truck and trailers:

|                              |           |
|------------------------------|-----------|
| Up to 42,000 lbs .....       | \$ 571.00 |
| 42,001 to 44,000 lbs .....   | 631.00    |
| 44,001 to 46,000 lbs .....   | 691.00    |
| 46,001 to 48,000 lbs .....   | 752.00    |
| 48,001 to 50,000 lbs .....   | 812.00    |
| 50,001 to 52,000 lbs .....   | 871.00    |
| 52,001 to 54,000 lbs .....   | 931.00    |
| 54,001 to 56,000 lbs .....   | 992.00    |
| 56,001 to 58,000 lbs .....   | 1,052.00  |
| 58,001 to 60,000 lbs .....   | 1,112.00  |
| 60,001 to 62,000 lbs .....   | 1,172.00  |
| 62,001 to 64,000 lbs .....   | 1,233.00  |
| 64,001 to 66,000 lbs .....   | 1,293.00  |
| 66,001 to 68,000 lbs .....   | 1,352.00  |
| 68,001 to 70,000 lbs .....   | 1,412.00  |
| 70,001 to 72,000 lbs .....   | 1,473.00  |
| 72,001 to 74,000 lbs .....   | 1,533.00  |
| 74,001 to 76,000 lbs .....   | 1,593.00  |
| 76,001 to 78,000 lbs .....   | 1,653.00  |
| 78,001 and over .....        | 65.50     |
| per ton or fraction thereof. |           |

(2) Payment of the fees provided in this section *exempts* a semitrailer or trailer in combination with a motor truck or truck-tractor so licensed from the fees provided in sections 32-3302, 32-3310, 32-3312, and 53-129.

(3) *The* trailers or semitrailers must be currently registered in another state or county.

(4) A trailer or semitrailer entering the state in combination with a truck or truck-tractor licensed under the above schedule may be moved in the local delivery zone in combination with a truck, truck-tractor, licensed under section 32-3301, without payment of any additional fees on *the* truck or truck-tractor, trailer or semitrailer.

(5) A permit must be obtained from the *department of highways* before *the* truck-tractor is used in local service and *the* permit is continuous and issued at no fee. *The* permit shall not be issued until proof of payment of fees under Schedule III has been established."

Section 113. Section 32-3303, R.C.M. 1947, is amended to read as follows:



**"32-3303. Additional fees — gross weight over 42,000 pounds.** In addition to the fees provided for in sections 32-3301 and 32-3302, for each motor truck, truck-tractor, trailer, or semitrailer having a gross loaded weight in excess of forty-two thousand (42,000) pounds and within the weight limits specified in *sections 32-1123.1 through 32-1123.11*, there shall be paid and collected annually a fee of sixty-two dollars and fifty cents (\$62.50) for each two thousand (2,000) pounds, or fraction thereof."

Section 114. Section 32-3308, R.C.M. 1947, is amended to read as follows:

**"32-3308. Additional fees — quarterly payment.** When the gross weight of *a* vehicle exceeds twenty-four thousand (24,000) pounds, the additional fees for motor trucks, trailers, tractors, pole trailers, or semi-trailers may be purchased for a three months' period for one-fourth ( $\frac{1}{4}$ ) the regular fee at the beginning of any quarter of the calendar year. For each fee so paid other than at the time of payment of the basic license fee, an additional fee of one dollar (\$1) shall be charged. The *department may adopt* rules relative to the issuance and display of certificates or insignia, which shall state the quarters for which the vehicle is licensed."

Section 115. Section 32-3309, R.C.M. 1947, is amended to read as follows:

**"32-3309. Failure to pay additional fees — penalty.** A vehicle licensed under section 32-3308 *may not* be operated over the public highways unless the owner or operator *of the vehicle*, within ten (10) calendar days or seven (7) business days as provided by law, whichever is greater, after the expiration of *the* three-month period, *pays* the required fee for a license for an additional three-month period, or for the remainder of the year. A person who operates *a* vehicle upon the public highways after the expiration of *the* ten (10) calendar days or seven (7) business days as provided by law, whichever is greater, *is* guilty of a misdemeanor. In addition he shall be required to purchase a gross weight license for the vehicle involved at the fee covering an entire year's license for operation *of the vehicle*, less the fees for *a* period of the year already paid. If, within five (5) days thereafter, no license for a full year has been purchased as required, the Montana highway patrol, county sheriff or city police may impound *the* vehicle in *the* manner *which is* directed for *these* cases by the *highway patrol chief* until the requirement is met."

Section 116. Section 32-3310, R.C.M. 1947, is amended to read as follows:

**"32-3310. Three unit combination — fees in lieu of gross weight fees otherwise provided — marking.** (1) *Instead* of the gross weight fees provided in sections 32-3301 through 32-3308, the owner of *a* motor truck or truck-tractor used on the highways of the state in connection with two (2) trailers or semitrailers at the same time shall register them as a three (3) unit combination in the following manner:

(a) By paying the registration and other fees covering the maximum practical gross vehicle weight for *the* truck or truck-tractor, but not less than the actual operating gross weight under sections 53-114, 53-122, 32-3301 and 32-3303.

(b) By registering *the* trailers in accordance with sections 53-114 and 53-122, and by paying the gross vehicle weight fee prescribed for the maximum trailing load in accordance with sections 32-3302 and 32-3303 on the combined gross weight of the two (2) trailers or semitrailers, treating them as if they were a single unit.

(2) *This section does not authorize axle loads in excess to those established by sections 32-1123.1 through 32-1123.11."*

Section 117. Section 32-3313, R.C.M. 1947, is amended to read as follows:

**"32-3313. Temporary trip permits showing payment of fees — display.** (1) Temporary trip permits showing payment of the fees provided for in section 32-3312 shall be issued under rules prescribed by the *department*. The permit shall be displayed in the vehicle for which the fee has been paid at all times while *the* vehicle is being operated on the highways of this state by posting it where it may be read.

(2) The *department* may limit the operation of *the* vehicle in this state to a definite period of time."

Section 118. Section 32-3314, R.C.M. 1947, is amended to read as follows:

**"32-3314. Time for payment of fees by nonresidents.** A nonresident owner or operator of a motor truck, truck-tractor, trailer or semitrailer shall, immediately upon arrival in the state, contact the nearest highway patrol office, any *department* office, the county sheriff, or the county treasurer's office to pay the fee and secure the permit prescribed. All fees collected shall immediately be remitted to the county treasurer."

Section 119. Section 32-3315, R.C.M. 1947, is amended to read as follows:

**"32-3315. Sales tax on new motor vehicles.** (1) In consideration of the right to use the highways of the state, there shall be imposed a tax upon all sales of new motor vehicles for which a license is sought and an original application for title is made. The word motor vehicle as used in this section *means* automobiles, auto trucks and motorcycles, propelled by their own power, used upon the public highways of the state. The tax shall be paid by the purchaser when he applies for his original Montana license through the county treasurer.

(2) The sales tax shall be:

(a) One and one-half per cent (1 ½%) of the F.O.B. factory list price or F.O.B. port of entry list price, during the first quarter of the year.

(b) One and one-eighth per cent (1 ⅛%) of the list price during the second quarter of the year.

(c) Three-fourths (¾) of one per cent (1%) during the third quarter of the year.

(d) Three-eighths (⅜) of one per cent (1%) during the fourth quarter of the year.

(3) *If the manufacturer or importer fails to furnish the F.O.B. factory list price or F.O.B. port of entry list price, the department may use published price lists.*

(4) *The proceeds from this tax shall be remitted to the state treasurer every thirty (30) days for credit to the state highway account of the earmarked revenue fund.*

(5) *The new vehicle is not subject to any other assessment or taxation during the calendar year in which the original application for title is made."*

Section 120. Section 32-3317, R.C.M. 1947, is amended to read as follows:

**"32-3317. Excess weight — penalties.** (1) *The operator is subject to the penalties stated in this section whenever the gross laden weight of any motor truck, truck-tractor, trailer, or semitrailer operated upon any highway in this state exceeds:*

(a) *The gross vehicle weight shown on the owner's certificate of registration and tax receipt issued under section 53-107, or*

(b) *The gross vehicle weight shown on the gross vehicle weight receipt issued under section 32-3205.1.*

(2) *The operator shall:*

*Immediately thereafter pay to the nearest county treasurer or to the department the difference between the fee already paid and that applicable to the gross weight of his vehicle before unloading the excess, provided that it does not exceed the legal axle weight."*

Section 121. Section 32-3401, R.C.M. 1947, is amended to read as follows:

**"32-3401. Permit and transit plates for new vehicles being transported by drive-away or tow-away methods.** (1) *A person, firm, partnership or corporation, regularly and lawfully engaged in the transportation of new vehicles over the highways of this state from manufacturing or assembly points to agents of manufacturers and dealers in this state or in other states, territories, foreign countries or provinces, by the drive-away or tow-away methods, where the vehicles being driven, towed or transported by the saddle-mount, tow-bar or full-mount methods, or a lawful combination of these methods, will be transported over the highways of the state but once, may annually apply to the department of justice for a permit to use the highways of this state, and shall pay, upon filing the application, a fee of one hundred dollars (\$100). Upon processing of the application, that department shall issue an annual permit to the applicant.*

(2) *The permit holder may also apply to the department of justice for a sufficient number of distinctive transit plates or devices showing the permit number for identification of the vehicles being transported by the permit holder, and the plates or devices may be used on a vehicle being driven, towed or transported by and under the control of the permit holder.*

*That department shall collect the additional sum of one dollar (\$1) for each pair of transit plates or devices applied for and issued.*

(3) The *department of justice* shall retain the permit and plate fees to defray costs of administering this act.

(4) The permit and transit plates or devices expire on December 31 of each year."

Section 122. Section 32-3402, R.C.M. 1947, is amended to read as follows:

"32-3402. **One-trip fee in addition to permit and plate fees, payable quarterly.** In addition to the permit and plate fees, a permit holder shall pay to the *department of justice* a one-trip fee of five dollars (\$5) per driver- vehicle. The fee shall be paid within fifteen (15) days after the end of the calendar quarter upon forms recommended or supplied by *that department.*"

Section 123. Section 32-3403, R.C.M. 1947, is amended to read as follows:

"32-3403. **Disposition of funds collected.** The *department of justice* shall retain five per cent (5%) of the funds collected in payment of the trip fees to defray costs of administration. The remaining ninety-five per cent (95%) shall be remitted, on or before the fifteenth day of each month after collection, to the state treasurer for deposit to the credit of the *department of highways.*"

Section 124. Section 32-3707, R.C.M. 1947, is renumbered section 53-639.1, and is amended to read as follows:

"53-639.1. **Special mobile equipment — exemption from registration and payment of fees and charges — identification plate — application — fee — publicly owned special mobile equipment.**

(1) A person, firm, partnership, or corporation who owns, leases, or rents special mobile equipment as defined in section 53-642 and occasionally moves that equipment on, over, or across the highways of the state, is not subject to registration of that equipment or required to pay the fees and charges provided for in *chapters 32 through 35 of Title 32*. Prior to movement on the highways, however, each piece of equipment shall display an equipment identification plate or a dealers' license plate attached to the equipment.

(2) Annual application for the identification plate shall be made to the county treasurer before any piece of equipment is moved on the highways. Application shall be made on a form furnished by the *department of justice*, together with the payment of a fee of five dollars (\$5). The equipment for which a special mobile equipment plate is sought, is subject to the assessment of personal property taxes either on the date application is made for the plate, if that date falls between the first day of January and the first Monday of March, or on the first Monday of March. The personal property taxes assessed against the special mobile equipment must be paid *before the issuance of a special mobile equipment plate*. The fees collected under this section belong to the county road fund.

(3) The identification plate *expires* on March 31 of each year.

(4) Publicly owned special mobile equipment, and implements of husbandry used exclusively by an owner in the conduct of his own farming operations, are exempt from this section."

Section 125. Section 32-3805, R.C.M. 1947, is amended to read as follows:

**"32-3805. Term — power to redeem — maximum interest.**

(1) *Bonds* issued under subsection (1) of section 32-3801 *may not be issued* for a longer term than twenty (20) years.

(2) A bond issued under subsection (1) (b) of that section *may not be issued* for a term longer than ten (10) years, except that:

(a) If the unexpired term of the bonds to be refunded is greater than ten (10) years, the refunding bonds may be issued for the unexpired term; or

(b) If the ten (10) year term requires an annual tax levy for payment of the refunding bonds which exceeds ten (10) mills on all property subject to taxation, the term may be so extended as to reduce the annual levy to ten (10) mills. In no event shall the term exceed twenty (20) years.

(3) All bonds issued for a term longer than five (5) years shall be redeemable at the option of the county five (5) years after the date of issue and on any payment due date thereafter before maturity. This statement shall appear on the face of each bond.

(4) Interest shall be payable semiannually."

Section 126. Section 32-3902, R.C.M. 1947, is amended to read as follows:

**"32-3902. General power of department to acquire interests in property.** Notwithstanding any other provision of law, the *department of highways* may acquire by purchase or other lawful manner lands or other real property, excluding oil, gas and mineral rights, which it *considers* reasonably necessary for present or future highway purposes. The *department* may acquire a fee simple or lesser estate or interest."

Section 127. Section 32-3904, R.C.M. 1947, is amended to read as follows:

**"32-3904. Exercise of right of eminent domain — presumption.**

(1) Whenever the *department* cannot acquire lands or other property or interests *in the lands or property* at a price or cost which it *considers* reasonable, it may direct the attorney general or any county attorney to procure the interests by proceedings to be instituted as provided in sections 93-9901—93-9926 against all nonaccepting landholders.

(2) It shall not so direct the attorney general or any county attorney until it adopts *an order* declaring that:

(a) Public interest and necessity require the construction or completion by the state of the highway or improvement for one of the purposes set forth in section 32-3903.

(b) The interest described in the *order* and sought to be condemned is necessary for the highway or improvement.

(c) The highway or improvement is planned and located in a manner which will be compatible with the greatest public good and the least private injury.

(3) The *order creates and establishes* a disputable presumption:

(a) Of the public necessity of the proposed highway or improvement.

(b) That the taking of the interest sought is necessary therefor.

(c) That the proposed highway or improvement is planned or located in a manner which will be most compatible with the greatest public good and the least private injury."

Section 128. Section 32-3905, R.C.M. 1947, is amended to read as follows:

**"32-3905. Acquisition of whole parcel — sale of excess.**

(1) Whenever any interest in a part of a parcel of land or other real property is to be acquired for highway purposes, leaving the remainder in a shape or condition as to be of little market value, or to give rise to claims or litigation over severance or other damage, the *department* may acquire the whole parcel. It may sell or exchange the remainder for other property needed for highway purposes.

(2) Whenever a part of a parcel of land acquired for highway purposes is in a shape or size as to come within section 11-614, the *department* shall prepare and file the required plat in the office of the county clerk and recorder."

Section 129. Section 32-3906, R.C.M. 1947, is amended to read as follows:

**"32-3906. Power to acquire for future.** (1) The power conferred by chapters 39 and 40 of this title to acquire interests in lands or other real property includes power to acquire for reasonably foreseeable future needs.

(2) The *department* may lease unused portions of lands or other real property which are held for highway purposes and interstate highway rights of way which are not presently needed for highway purposes on *the terms and conditions which it decides*. The *department* may repair, maintain, and care for *the property* in order to secure rent *from it*.

(3) All rent received shall be deposited to the credit of the *department*."

Section 130. Section 32-3907, R.C.M. 1947, is amended to read as follows:

**"32-3907. Road building materials.** (1) A right of way or easement acquired by the *department* for construction, operation, repair, reconstruction, or maintenance of highways *includes*, among others, the right to use, remove, relocate, redistribute, or otherwise dispose of gravel and other road-building materials found or located within the boundaries of the right of way or easement.

(2) For the purposes of chapters 39 and 40 of this title, *the gravel or materials is considered* to be real property and not minerals."

Section 131. Section 32-3908, R.C.M. 1947, is amended to read as follows:

**"32-3908. No compensation in certain cases — exceptions.**

(1) Whenever the *department* files a description and plan as provided in section 32-2413, no consideration, allowance or assessment of values or compensation shall be made in the purchase or condemnation of buildings or improvements or subdivisions placed or erected on the land covered by the plan after the filing.

(2) The establishment of the highway location covered by the description and plan shall be ineffective one year after filing if no action to condemn or acquire the property has been commenced.

(3) Nothing in this section or in section 32-2413 *applies* to crops or similar improvements planted on the lands described. They *are* governed by section 93-9913."

Section 132. Section 32-3909, R.C.M. 1947, is amended to read as follows:

**"32-3909. Exchange of interests in real property.** (1) The *department* may determine that *an* interest in real property, however acquired by it, is no longer necessary to the laying out, altering, construction, improvement, or maintenance of *a* highway. It may then exchange *the* interest, either as entire or partial consideration, for any other interest in real property needed for highway purposes. The *department* may establish the manner and terms and conditions for *the* exchange.

(2) The owner from whom *the* interest was originally acquired by the state, or his successor in interest, *has* the right to require the *department* to offer *the* land for sale in the manner set forth in sections 32-3910 and 32-3911. The *department* shall notify *the* owner or successor in interest of its intention to exchange *the* interest. The owner shall make his demand for sale by registered mail to the *department* within ten (10) days after receipt of notice from the *department*."

Section 133. Section 32-3910, R.C.M. 1947, is amended to read as follows:

**"32-3910. Sale of interests in real property.** The *department* may sell *an* interest in real property, however acquired by it, which it determines is not necessary to the laying out, altering, construction, improvement, or maintenance of *a* highway. If the interest is reasonably of a value in excess of one hundred dollars (\$100), sale shall be made to the highest bidder at public auction or by sealed bids as the *department* *decides*. The sale shall be conducted as provided in section 32-3911."

Section 134. Section 32-3911, R.C.M. 1947, is amended to read as follows:

**"32-3911. Conduct of sale.** (1) The *department* shall publish notice of the sale in a newspaper published in the county in which the interest is located once a week for two (2) successive weeks. Sale shall be held at the office of the *department* at the capitol.

(2) Before *the* sale of *an* interest having a value in excess of one hundred dollars (\$100), the *department* shall have it appraised at a price representing a fair market value. The appraised value shall be stated in the published notice.

(3) A sale *may not* be made of *an* interest unless it has been appraised within three (3) months prior to the date of the sale. A sale *may not* be made for less than ninety per cent (90%) of the appraised value.

(4) *Title to an interest may not pass from the state until the purchaser has paid the full amount of the purchase price into the state treasury to the credit of the department."*

Section 135. Section 32-3912, R.C.M. 1947, is amended to read as follows:

**"32-3912. Option of original owner or successor in interest to purchase at sale price.** The owner from whom the interest was originally acquired, or his successor in interest, shall have the option to purchase the interest by offering therefor an amount of money equal to the highest bid received for the interest at the sale. The offer shall be sent to the *department* by registered mail within ten (10) days from the date of the sale."

Section 136. Section 32-3913, R.C.M. 1947, is amended to read as follows:

**"32-3913. Private sale if no bid or offer.** (1) If, after proper notice is published, the *department* receives neither bid at public sale nor offer from the original owner of his successor in interest, it may at any time thereafter sell the interest at private sale. At *the* sale, the *department* may accept as the purchase price an amount of money not less than ninety per cent (90%) of the appraised value.

(2) *Title to an interest may not pass from the state until the purchaser has paid the full amount of the purchase price into the state treasury to the credit of the department."*

Section 137. Section 32-3914, R.C.M. 1947, is amended to read as follows:

**"32-3914. Sale of personal property — maps, books, other printed matter.** (1) The *department* may sell at public or private sale, as it *determines*, *an* interest in personal property, however acquired by it, which it determines is not necessary to the laying out, altering, construction, improvement, or maintenance of *a* highway.

(2) The *department* may sell at public or private sale, as it *determines*, maps, books, pamphlets, or other printed matter, prepared or acquired by the *department*. The *department* may sell copies of highway records to the public and may set reasonable prices *for them*.

(3) The proceeds from sales made under this section shall be paid into the state treasury to the credit of the *department*."

Section 138. Section 32-3915, R.C.M. 1947, is amended to read as follows:



**"32-3915. Conveyances — execution — contents.** (1) *Land* or an interest *in land* sold by the *department* shall be conveyed only when full payment has been made *for it*. It shall be conveyed by a deed or patent of conveyance without covenants which recites that it was issued under this chapter.

(2) The deed or patent shall contain a reservation of easements for rights of way for the benefit of the United States, and all other reservations to which the land conveyed may be subject.

(3) The deed or patent shall be signed by the governor, or, in case of his absence or inability, the lieutenant governor. It shall be attested by the secretary of state and have attached the great seal of the state. It need not be acknowledged."

Section 139. Section 32-3916, R.C.M. 1947, is amended to read as follows:

**"32-3916. Rendering irrigable lands unusable — unpaid construction costs.** (1) Whenever the *department* acquires irrigable land for highway purposes, or acquires land as to render other irrigable land unusable for irrigation, it shall pay to the owner of the irrigation or drainage project, in addition to other sums allowed by law, a proportionate share of the unpaid construction costs of the project or drainage district.

(2) The *department* shall also pay a lump-sum amount to the district sufficient to produce on an amortized basis for a reasonable period not to exceed ninety (90) years, a sum of money equal to the annual increase in operation and maintenance costs against the remaining lands under irrigation in the district resulting from the severance from the district of the lands acquired by the *department* and not overcome by bringing in new or additional land under irrigation. For the purpose of determining the amount of *the* lump-sum payment, the annual operation and maintenance assessment of the district shall be considered to be the average for the five (5) years, or so many years as the district has assessment experience, if less than five (5) years, preceding the date of acquisition."

Section 140. Section 32-3923, R.C.M. 1947, is amended to read as follows:

**"32-3923. Definitions.** *In sections 32-3923 through 32-3931:*

(a) "Displaced person" means any individual, family, business or farm operation which moves from real property acquired for state highway purposes or for a federal-aid highway.

(b) "Individual" means a person who is not a member of a family.

(c) "Family" means two (2) or more persons living together in the same dwelling unit who are related to each other by blood, marriage, adoption or legal guardianship.

(d) "Business" means any lawful activity conducted primarily for the purchase and resale, manufacture, processing or marketing of products, commodities, or other personal property; or for the sale of services to the public; or by a nonprofit corporation.

(e) "Farm operation" means any activity conducted primarily for the production of one (1) or more agricultural products or commodities for sale and home use, and customarily producing the products or commodities in sufficient quantity to be capable of contributing materially to the operator's support."

Section 141. Section 32-3924, R.C.M. 1947, is amended to read as follows:

**"32-3924. Advisory assistance.** (a) The *department of highways* may give relocation advisory assistance to an individual, family, business or farm operation displaced because of the acquisition of real property for a project on the state highway systems.

(b) In giving assistance, the *department* may establish a temporary local relocation advisory assistance office to assist in obtaining replacement facilities for individuals, families and businesses which must relocate because of the acquisition of right of way for a project on the state highway systems."

Section 142. Section 32-3925, R.C.M. 1947, is amended to read as follows:

**"32-3925. Compensation for moving expense as part of cost of construction — fixed payments in lieu of actual expense — dwelling — business or farm operation.** (a) As a part of the cost of construction the *department* may compensate a displaced person for his actual and reasonable expense in moving himself, family, business or farm operation, including moving personal property, and for his actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, not to exceed an amount equal to the reasonable expenses that would have been required to relocate the property, as determined by the *department*, and actual reasonable expenses in searching for a replacement business or farm.

(b) A displaced person who moves from a dwelling *may elect to receive, instead* of the payments authorized by *subsection* (a), a moving expense allowance, determined according to a schedule established by the *department*, not to exceed three hundred dollars (\$300), and in addition a dislocation allowance of two hundred dollars (\$200).

(c) A displaced person who moves or discontinues his business or farm operation *may elect to receive instead* of the payment authorized by *subsection* (a), a fixed relocation payment in an amount equal to the average annual net earnings of the business or farm operation, except that the payment *may not* be less than two thousand five hundred dollars (\$2,500) nor more than ten thousand dollars (\$10,000). In the case of a business, a payment *may not* be made under this *subsection* unless the *department* is satisfied that the business cannot be relocated without a substantial loss of patronage, and is not a part of a commercial enterprise having at least one (1) other establishment, not being acquired, which is engaged in the same or similar business. For purposes of this *subsection*, the term "average annual net earnings" means one-half (½) of any net earnings of the business or farm operation, before federal and state income taxes, during the two (2) taxable years immediately preceding the taxable year

in which *the* business or farm operation moves from the real property acquired for *the* project or during such other period *which* the *department* determines to be more equitable for establishing *the* earnings, and includes any compensation paid by the business or farm operation to the owner, his spouse or his dependents during *this* two (2) year period. To be eligible for the payment authorized by this *subsection*, the business or farm operation must make its state income tax returns available and its financial statements and accounting records available for audit and confidential use to determine the payment authorized by this *subsection*."

Section 143. Section 32-3926, R.C.M. 1947, is amended to read as follows:

**"32-3926. Additional payment for realty with qualified dwelling — period of occupancy — amount — owner must subsequently purchase dwelling.** (1) In addition to the payments authorized by section 32-3925 as a part of the cost of construction, *the department* may make *the following* payments to the owner of real property acquired for a project on the state highway systems which is improved with a single, two (2) or three (3) family dwelling, actually owned and occupied by the owner for not less than one hundred eighty (180) days prior to the initiation of negotiations for the acquisition of the property:

(a) A payment not to exceed fifteen thousand dollars (\$15,000) which, when added to the acquisition payment, equals the reasonable price required for a comparable dwelling determined, in accordance with standards established by the *department*, to be a decent, safe, and sanitary dwelling adequate to accommodate the displaced owner, reasonably accessible to public services and place of employment and available on the market;

(b) A payment, if any, which will compensate *the* displaced person for increased costs which *the* person is required to pay for financing the acquisition of a comparable replacement dwelling. *This* payment shall be made only if the dwelling acquired by the *department* was encumbered by a bona fide mortgage which was a valid lien on *the* dwelling for not less than one hundred eighty (180) days prior to the initiation of negotiations for the acquisition of *the* dwelling. *This* payment shall be equal to the excess in the aggregate interest and other debt service cost of that amount of the principal of the mortgage on the replacement dwelling which is equal to the unpaid balance of the mortgage on the acquired dwelling under the remainder term of the mortgage on the acquired dwelling reduced to discounted present value. The discount rate shall be the prevailing interest rate paid on savings deposits by commercial banks in the general area in which the replacement dwelling is located;

(c) The payment of reasonable expenses incurred by *the* displaced person for evidence of title, recording fees, and other closing costs incidental to the purchase of replacement dwelling but not including pre-paid expenses.

(2) *Payments* shall be made only to a displaced owner who purchases and occupies a dwelling, that meets standards established by the *department*, within one (1) year subsequent to the date on which he is required to move from the dwelling acquired for the project."

Section 144. Section 32-3927, R.C.M. 1947, is amended to read as follows:

**"32-3927. Additional payment for realty with other dwelling — period of occupancy — amount.** (a) In addition to the payment authorized by section 32-3925, as a part of the cost of construction, the *department* may make a payment to *an* individual or family displaced from *a* dwelling not eligible to receive a payment under section 32-3926, which dwelling was actually and lawfully occupied by *the* individual or family for not less than ninety (90) days prior to the first written offer for the acquisition of *the* property.

(b) *The* payment, not to exceed four thousand dollars (\$4,000), shall be the additional amount which is necessary to enable *the* individual or family to lease or rent for a period not to exceed four (4) years, or to make the down payment on the purchase of a decent, safe and sanitary dwelling of standards adequate to accommodate *the* individual or family in areas not generally less desirable in regard to public utilities and public and commercial facilities, except that if the amount of the down payment to purchase exceeds two thousand dollars (\$2,000), *the* individual or family must equally match *the* amount in excess of two thousand dollars (\$2,000) in making the down payment."

Section 145. Section 32-3928, R.C.M. 1947, is amended to read as follows:

**"32-3928. Review of application for assistance — highway commission's decision final.** A displaced person aggrieved by a determination as to eligibility for a payment authorized by *sections 32-3925 through 32-3927*, or the amount of a payment, may have his application reviewed by the commission, whose decision shall be final."

Section 146. Section 32-3929, R.C.M. 1947, is amended to read as follows:

**"32-3929. Rules.** The *department* may adopt rules to implement *sections 32-3923 through 32-3931*, including rules to implement the payment of expenses authorized by *sections 32-3925 through 32-3927*, and other rules relating to highway relocation assistance *which are* necessary or desirable under federal laws and rules. *The department's* rules shall include provisions relating to:

(a) A moving expense allowance, as provided in *subsection (b)* of section 32-3925, for a displaced person who moves from a dwelling, determined according to a schedule, not to exceed three hundred dollars (\$300);

(b) The conditions for decent, safe, and sanitary dwellings;

(c) Procedure for an aggrieved displaced person to have his determination of eligibility or amount of payment reviewed by the commission; and

(d) Eligibility of displaced persons for relocation assistance payments, the procedure for *those* persons to claim *the* payments, and the amounts of *the* payments."

Section 147. Section 32-3930, R.C.M. 1947, is amended to read as follows:

**"32-3930. Assistance payments not income for state tax purposes.** A payment received by a displaced person under *sections 32-3923 through 32-3929 may not* be considered as income for Montana state income tax purposes."

Section 148. Section 32-3931, R.C.M. 1947, is amended to read as follows:

**"32-3931. No new element of condemnation damages created.** Nothing in *sections 32-3923 through 32-3931 creates* in a condemnation proceeding brought under the power of eminent domain *an* element of damages not in existence on *July 1, 1969.*"

Section 149. Section 32-4016, R.C.M. 1947, is amended to read as follows:

**"32-4016. Board to transfer responsibility for right of way.** A board shall transfer its control over, and responsibility for, *a* county road when the *department of highways* notifies it that:

(1) A federal or state highway has been established and definitely located over a county road.

(2) Funds are available for immediate construction of the highway.

(3) The highway will be improved and maintained by the *department*.

Section 150. Section 32-4102, R.C.M. 1947, is amended to read as follows:

**"32-4102. Competitive bidding.** (1) When the estimated cost of any work exceeds one thousand dollars (\$1,000), the commission shall let the contract by competitive bidding. Award shall be made upon such notice and upon such terms as the commission may prescribe by its rules. However, except when prohibited by federal law, the commission must make awards and contracts in accordance with sections 82-1924 and 82-1926.

(2) If the commission finds that *the* work may be done in some more efficient manner, it need not let the contract by competitive bidding.

(3) If, on highway construction work financed in whole or in part by federal funds, the United States secretary of *transportation* affirmatively finds that under the circumstances relating to a particular project some method other than competitive bidding is in the public interest, the commission may enter into contracts with *a* board of county commissioners. *These* contracts may authorize each county to acquire rights of way for, survey, and construct farm to market, secondary, or feeder roads within the county by force account, unit price, or otherwise, as may be agreed by the commission and *the* board."

Section 151. Section 32-4204, R.C.M. 1947, is amended to read as follows:

**"32-4204. Letting of contract for bridge.** (1) All bids for construction or repair of bridges shall meet these requirements:

(a) If the *department* has adopted or established a standard plan and specifications, the bids must be submitted thereon.

(b) All bids must be sealed. Each bidder shall meet the requirements of section 6-501, R.C.M. 1947.

(2) The board may reject any and all bids. If a contract is awarded, the board shall do so in accordance with the requirements of sections 41-701 — 41-703, 82-1924, and 82-1926. When there is no prevailing rate of wages set by collective bargaining, the board shall determine the prevailing rate to be stated in the contract. The contract must be entered with the unanimous consent of the members of the board.

(3) Before entering upon performance of the work, the contractor shall comply with the requirements of sections 6-401 — 6-404, R.C.M. 1947. For the purposes of those sections with relation to contracts with the board, a contract shall not be completed until the board, while formally convened, affirmatively accepts all of the work thereunder."

Section 152. Section 32-4301, R.C.M. 1947, is amended to read as follows:

"32-4301. **Policy.** The legislative assembly declares it to be the policy of this state to facilitate the flow of traffic and promote public safety by controlling access to:

(1) Highways included by the *federal highway administration* roads in the national system of interstate highways.

(2) Throughways and intersections with throughways.

(3) Such other federal-aid and state highways as shall be designated by the commission in accordance with the requirements set forth in this chapter."

Section 153. Section 32-4302, R.C.M. 1947, is amended to read as follows:

"32-4302. **Definitions.** When used in this chapter:

(1) "Interstate highway" means *a* highway included as a part of the National System of Interstate Highways.

(2) "Controlled access highway" means *those* portions of *an* interstate highway, throughway, or throughway intersection which the commission *designates* for through traffic, or other federal-aid or state highway over, from or to which owners or occupants of abutting land or other persons have no easement of access or only a limited easement of access, light, air, or view. It also *means* those portions of spurs to the interstate highway system which the commission *designates* as unsafe or impeded by unrestricted access of traffic from intersecting streets or alleys or public or private roads or ways of passage.

(3) "Controlled access facility" means and includes streets, alleys, public roads, private roads, and ways of passage intersecting *a* controlled access highway and real property contiguous to the right of way of *a* controlled access highway.

(4) "Existing highway" means and includes highways, roads, and streets established, constructed, and in use on March 2, 1955. It *does* not include highways, roads, or streets, established, constructed, and in use after that date, or highways, roads, or streets, or portions thereof relocated after that date.

(5) "Arterial highway" means *a* state highway designated by agreement between the commission and the secretary of *transportation* as part of the federal-aid primary system and any highway so designated as a part of the federal-aid secondary system which has been constructed and is being used primarily for through traffic on a continuous route.

(6) "Throughway" means *a* portion of an arterial highway constructed and used for carrying traffic partially or entirely around a town or city or a portion thereof.

(7) "Throughway intersection area" means an area within a radius of three hundred (300) feet from the point of intersection of the center lines of a throughway and a public road, street, or highway.

(8) "Highway authorities" or "authority" means the entities in state, county, and municipal governments which have authority to construct, repair, and maintain highways, roads, and streets."

Section 154. Section 32-4308.1, R.C.M. 1947, is amended to read as follows:

"32-4308.1. **Maintenance of frontage roads.** *Frontage* roads shall be maintained by the *department of highways*."

Section 155. Section 32-4518, R.C.M. 1947, is amended to read as follows:

"32-4518. **Junkyards lawfully in existence.** (1) A junkyard lawfully in existence on *July 1, 1967*, which is within one thousand (1,000) feet of the nearest edge of the right of way and visible from the main traveled way of a highway on the interstate or primary systems shall be fenced or screened, if feasible, by the *department of highways* at locations on the highway right of way or in areas acquired for *these* purposes outside the right of way so as not to be visible from the main traveled way of *the* highway.

(2) Notwithstanding any other provision of this act, *a* junkyard lawfully in existence on October 22, 1965, which does not conform to the requirements of this act and which the United States secretary of transportation finds as a practical matter cannot be screened, *is* not required to be removed until July 1, 1970."

Section 156. Section 32-4519, R.C.M. 1947, is amended to read as follows:

"32-4519. **Regulations governing screening.** The *department* may *adopt* rules governing the materials to be used in, and the location, planting, construction and maintenance of screening or fencing required by this act."

Section 157. Section 32-4520, R.C.M. 1947, is amended to read as follows:

**"32-4520. Authority to acquire interest in land for screening and removal of junkyards.** (1) When the *department* determines that it is in the best interests of the state, it may acquire such lands or interests in lands as may be necessary to provide adequate screening.

(2) When the *department* determines that the topography of the land adjoining the highway will not permit adequate or economically feasible screening, it may acquire by gift, purchase, exchange or condemnation such interests in lands as may be necessary to secure the relocation, removal or disposal of junkyards which were either:

(a) Lawfully in existence on October 22, 1965; or

(b) Lawfully along any highway made a part of the interstate or primary systems on or after October 22, 1965, and before January 1, 1968; or

(c) Lawfully established on or after January 1, 1968.

(3) The *department* shall pay just compensation to the owner for the relocation, removal or disposal of any such junkyard."

Section 158. Section 32-4521, R.C.M. 1947, is amended to read as follows:

**"32-4521. Injunction.** The *department* may apply to the district court for the county in which is located any junkyard not conforming to the requirements of this act for an injunction to abate such nuisance."

Section 159. Section 32-4522, R.C.M. 1947, is amended to read as follows:

**"32-4522. Agreements with the United States.** The *department* may enter into agreements with the United States secretary of transportation as provided in Title 23, United States Code, relating to the control of junkyards in areas adjacent to the interstate and primary systems, and take action in the name of the state to comply with the terms of *those* agreements."

Section 160. Section 32-4717, R.C.M. 1947, is amended to read as follows:

**"32-4717. Outdoor advertising prohibited in proximity to highway — exceptions — standards and permits.** (a) *Outdoor* advertising *may not* be erected or maintained which is within six hundred and sixty (660) feet of the nearest edge of the right of way and which is visible from any place on the main traveled way, of an interstate or primary system, except:

(i) Directional and other official signs and notices, which signs and notices include, but *are* not limited to, signs and notices pertaining to natural wonders, scenic and historical attractions, as authorized or required by law.

(ii) Signs, displays and devices advertising the sale or lease of property upon which they are located.

(iii) Signs, displays and devices advertising activities conducted on the property upon which they are located.



(iv) Signs, displays and devices located in areas which are zoned industrial or commercial by a bona fide state, county or local zoning authority.

(v) Signs, displays and devices located in unzoned commercial or industrial areas, which areas shall be determined from actual land uses and by agreement between the *department of highways* and the secretary and defined by *rules adopted* by the commission. The exception granted by this subsection shall not apply to signs, displays and devices located within an unzoned area in which the commercial or industrial activity used in defining the area has ceased for a period of nine (9) months.

(b) Outdoor advertising authorized under subsections (i), (iv), and (v) of subsection (a) of this section shall conform with standards contained in, and shall bear permits required in, *rules* which are *adopted* by the commission and this act."

Section 161. Section 32-4718, R.C.M. 1947, is amended to read as follows:

"32-4718. **Rules controlling outdoor advertising.** The commission *may adopt rules* to control the erection and maintenance of outdoor advertising along the interstate and primary highway systems in conformance with the terms of this act and in conformity with section 131 of Title 23, United States Code, as amended."

Section 162. Section 32-4719, R.C.M. 1947, is amended to read as follows:

"32-4719. **Standards for permitted advertising.** Signs permitted under section 32-4717 (a) (i), (ii), (iii), (iv), and (v) shall conform to the following requirements:

(a) Signs *may* not be erected or maintained which exceed *one thousand two hundred (1,200)* square feet in area including border and trim, but excluding base or apron, supports, and other structural members.

(b) Maximum length *sixty (60)* feet.

(c) Maximum height *forty (40)* feet, as measured from the ground or, if the sign is attached to a structure, as measured from the base of the sign itself.

(d) No more than two (2) facings visible and readable from the same direction on the main traveled way may be erected on any one (1) sign structure. Whenever two (2) facings are so positioned, neither shall exceed *three hundred twenty-five (325)* square feet.

(e) Double-faced, back-to-back and V-type signs shall be considered as a single sign or structure.

(f) No two (2) signs shall be spaced less than five hundred (500) feet apart adjacent to an interstate highway, or limited-access primary highway except that signs may be erected closer than five hundred (500) feet if they are separated by buildings or other obstructions in such a manner that only one (1) sign facing located within the above spacing distance is visible from the highway at any one (1) time.

(g) Signs may not be located within five hundred (500) feet of any of the following which are adjacent to the highway, unless *the* signs are in an incorporated area:

(i) Public parks.

(ii) Public forests.

(iii) Public playgrounds.

(iv) Scenic areas designated as such by the department or other state agency having and exercising *this* authority.

(v) Cemeteries.

(h) A sign may *not* be located on an interstate highway or freeway within five hundred (500) feet of an interchange, or intersection at grade, or rest area. *The* five hundred (500) feet is to be measured along the interstate or freeway from the beginning or ending of the pavement widening at the exit from or entrance to the main traveled way.

(i) Signs may be illuminated, subject to the following restrictions:

(i) Signs which contain, include, or are illuminated by *a* flashing, intermittent, or moving light or lights are prohibited, except those giving public service information such as time, date, temperature, weather or similar information.

(ii) Signs which are not effectively shielded as to prevent beams or rays of light from being directed at *a* portion of the traveled ways of the interstate or federal-aid primary highway or which are of such intensity or brilliance as to cause glare or to impair the vision of the driver of any motor vehicle, or which otherwise interfere with *a* driver's operation of a motor vehicle are prohibited.

(iii) A sign *may not* be so illuminated that it interferes with the effectiveness of, or obscures an official traffic sign, device, or signal.

(j) The location of sign structures situated on the primary highways between streets, roads or highways entering or intersecting the main traveled way shall conform to the following minimum spacing criteria:

(i) Where the distance between centerlines of intersecting streets or highways is less than one thousand (1,000) feet, a minimum spacing between structures of one hundred fifty (150) feet may be permitted between the intersecting streets or highways.

(ii) Where the distance between centerlines of intersecting streets or highways is one thousand (1,000) feet or more, minimum spacing between sign structures shall be three hundred (300) feet."

Section 163. Section 32-4720, R.C.M. 1947, is amended to read as follows:

**"32-4720. Permits required — identification tags — pre-existing structures.** (1) A *sign* authorized by subsections (i), (iv), and (v) of subsection (a) of section 32-4717 may *not* be constructed or maintained without a permit. Applications for permits shall be made to the *department*

on forms furnished by it. The *department* shall require reasonable information to be furnished, including a statement that the owner or occupant of the land has consented to the erection or maintenance of the sign *on the land*. A permit must be obtained for each sign and the application for the permit must be accompanied by an initial fee of six dollars (\$6).

(2) Permits shall be issued for three (3) years, assigned a permit number, and renewed every three (3) years thereafter upon payment of three dollars (\$3) without the filing of a new application. All fees received shall be paid into the state highway account in the earmarked revenue fund.

(3) The *department* shall issue with each new permit a permanent identification tag not larger than six (6) square inches which shall be affixed to the sign in a position readily visible from the highway.

(4) Notwithstanding the foregoing provisions of this section, the *department* shall issue permits and identification tags, upon application and payment of the requisite fee for a structure lawfully in existence on *June 23, 1971*, and the permits shall thereafter be renewed for a period of time as is prescribed *in this section*, unless the structure is removed for improper maintenance."

Section 164. Section 32-4721, R.C.M. 1947, is amended to read as follows:

"32-4721. **Notice of violations — remedial action.** When the *department* determines that a willful false or misleading statement has been made in the application for a permit or that the structure for which a permit was issued is not in a reasonable state of repair, or is unsafe, the *department* shall notify the holder of the permit in writing, either by certified mail or by personal service, of the violation and specify that remedial action shall be taken within sixty (60) days or the permit will be revoked and action for removal of the sign commenced as provided in section 32-4722. No notice is required prior to filing a complaint after the notice period has lapsed."

Section 165. Section 32-4722, R.C.M. 1947, is amended to read as follows:

"32-4722. **Advertising unlawful — notice to remove — hearing — appeal to district court.** (1) The following outdoor advertising is unlawful:

- (a) When erected after *June 24, 1971*, contrary to this act; or
- (b) When a permit is not obtained as prescribed in this act; or
- (c) When a permittee fails to comply with a notice of violation as provided in section 32-4721.

(2) The *department* shall give notice in writing, either by certified mail or by personal service, to the owner or occupant of the land on which advertising believed to be unlawful is located and to the owner of the outdoor advertising structure, if the latter is known, or if unknown, by

posting notice in a conspicuous place on *the* structure, of its intention to remove the *unlawful* advertising. Within forty-five (45) days after the notice, the owner of the land or of the structure may make *a* written request for a hearing before the commission to show cause why the structure should not be removed.

(3) If a hearing before the commission is not requested, or if there is no appeal taken from the commission's decision at *the* hearing, or if the commission's decision is affirmed on appeal, the *department* shall immediately remove the unlawful outdoor advertising. The owner of the structure and the owner or occupant of the land *are* jointly and severally liable for the costs of *the* removal. The *department* incurs no liability for *the* removal, except for damage caused by negligence of, its agents or employees."

Section 166. Section 32-4723, R.C.M. 1947, is amended to read as follows:

"32-4723. **Acquisition of outdoor advertising rights — compensation.** (a) The *department* may acquire by gift, purchase, agreement, exchange or eminent domain, existing outdoor advertising and property rights pertaining to *the* advertising which were lawfully in existence on *June 24, 1971*, and which by *virtue* of this act *are* nonconforming. Eminent domain shall be exercised in accordance with the laws of the state.

(b) Just compensation shall be paid for outdoor advertising and property rights pertaining to the *advertising* acquired through the process of eminent domain. The *department* may remove outdoor advertising found in violation of *sections* 32-4721 or 32-4722 without payment of compensation.

(c) Despite *a* contrary provision in this act, *a* sign *may not* be required to be removed without just compensation, unless found to be in violation of *sections* 32-4721 or 32-4722. Except as provided in *sections* 32-4721 and 32-4722, *a* sign *may not* be required to be removed unless at the time of removal or discontinuance there are sufficient funds, from whatever source, appropriated and immediately available to pay the just compensation required under this section, and unless at *that* time the federal funds required to be contributed under section 131 (g) of Title 23, United States Code, with respect to the outdoor advertising being removed, have been apportioned and are immediately available to this state."

Section 167. Section 32-4724, R.C.M. 1947, is amended to read as follows:

"32-4724. **Agreements with secretary establishing specifications for advertising.** The *department* may enter into an agreement with the secretary regarding the size, lighting and spacing of outdoor advertising, as provided in this act, which may be erected and maintained within the areas adjacent to the interstate and primary highway system which are zoned commercial, industrial, or in such other unzoned commercial or industrial areas as may be determined by agreement, and as provided in this act."

Section 168. Section 53-118.6, R.C.M. 1947, is renumbered 32-3315.1, and is amended to read as follows:

**"32-3315.1. Demonstration of trucks and trailers authorized — dealer's plate to be used.** A new or used truck or trailer dealer licensed under section 53-118 may *not* demonstrate to a prospective purchaser a truck, truck tractor, trailer or semitrailer, owned by or consigned to the dealer, or otherwise controlled by the dealer, *without securing a demonstration permit and paying* the fees required in section 32-3315.2. The vehicle *must display* the dealer's registration plate or other current Montana registration and the demonstration permit."

Section 169. Section 53-118.7, R.C.M. 1947, is renumbered 32-3315.2, and is amended to read as follows:

**"32-3315.2. Application for truck demonstration permit — form and contents — number of permits authorized.** The licensed dealer shall obtain the demonstration permit upon application to the *department* and the payment of eight dollars (\$8) for each permit; the payment of this fee *is* in lieu of fees required under *this* chapter. The form of the *permit* and the application *for it* shall be provided by the *department* under rules *it prescribes*. The *permit* shall be designed so that the licensed dealer may fill in the necessary information *on it* and *so that the* permit will be validated by the dating, inserting of name and address of the prospective purchaser, and affixing thereto the signature of the licensed dealer. The licensed dealer may obtain more than one (1) but not *more than* five (5) demonstration permits with each application."

Section 170. Section 53-118.8, R.C.M. 1947, is renumbered 32-3315.3, and is amended to read as follows:

**"32-3315.3. Operation under truck demonstration permit — period of permit — rental under permit prohibited.** (1) A vehicle displaying the permit may be operated either laden or unladen. The permit expires seven (7) days after the date of validation by the licensed dealer.

(2) A demonstration permit *may* not be issued to the same prospective purchaser for the demonstration of the same vehicle or vehicles for more than one (1) seven (7) day period.

(3) The vehicle operating with the demonstration permit *may* not be leased or rented by the licensed dealer or operated for compensation by the licensed dealer."

Section 171. Section 53-118.9, R.C.M. 1947, is renumbered 32-3315.4, and is amended to read as follows:

**"32-3315.4. Violation of truck demonstration provisions.** Violation of sections 32-3315.1 through 32-3315.3 is a misdemeanor and subject to the *penalties under* section 32-3316. For the purposes of this section, a licensed dealer shall be considered the owner."

Section 172. Section 53-118.10, R.C.M. 1947, is renumbered 32-3315.5, and is amended to read as follows:

**"32-3315.5. Disposition of truck demonstration fees.** Fees collected under section 32-3315.2 shall be disposed of in the manner provided in section 32-3204."

Section 173. Section 53-514, R.C.M. 1947, is amended to read as follows:

**"53-514. Department of highways custodian of motor vehicles owned or leased by state.** The *department of highways* is the custodian of all motor vehicles owned or leased by the state or its agencies operated out of areas or locations where five (5) or more state vehicles or three (3) or more state agencies are located."

Section 174. Section 53-515, R.C.M. 1947, is amended to read as follows:

**"53-515. Rules — authority and enforcement.** The *department may adopt* and enforce reasonable rules governing the use and operation of motor vehicles used in the service of the state consistent with this *chapter*. The *department may* assign the use of state-owned motor vehicles to state officers or institutions or employees thereof. *The actual costs for maintenance, service and storage to these vehicles shall be paid to the department by the individual agencies involved.*"

Section 175. Section 53-516, R.C.M. 1947, is amended to read as follows:

**"53-516. Seal on motor vehicles.** A motor vehicle owned by the state shall have a seal eight (8) inches in diameter placed upon the vehicle in accordance with the rules adopted by the *department*."

Section 176. Section 53-517, R.C.M. 1947, is amended to read as follows:

**"53-517. State car for state business only — compensation for driving personal vehicle.** A state officer or employee *may not* use a state-owned vehicle for his own personal and private use, nor *may* he be compensated for driving his own vehicle *unless that* motor vehicle is *used* on state business."

Section 177. Section 53-518, R.C.M. 1947, is amended to read as follows:

**"53-518. Adoption of travel rules — contents — removal from office for violations.** The *department* shall adopt travel *rules* providing:

(a) *For filing* an application for travel showing necessity for trips, points to be visited, approximate time of departure and return;

(b) *For filing* a report upon completion of the trip, showing actual points reached, mileage traveled and car cost record data;

(c) *For recording* in the car operating history record book all items of expense incurred in the purchase of gas, oil, repairs, labor, storage, or service; and,

(d) That a decal be affixed to the instrument panel of every state-owned vehicle with the following information contained *on the decal*:

Any officer or employee of the state government who uses or authorizes the use of any state-owned motor-propelled passenger carrying vehicle, or of any motor-propelled passenger carrying vehicle leased by the state

government, for other than official purposes shall be summarily removed from office by the head of the department of establishment concerned."

Section 178. Section 53-519, R.C.M. 1947, is amended to read as follows:

**"53-519. Requisitions for purchases — operating history records.**

(1) All requisitions for automobile purchases shall be submitted to the *department of administration* twice yearly, at *the times that it specifies*, and other requisitions for automobile purchases *may not* be accepted by it, unless the governor *considers the* purchase to be an emergency necessity.

(2) All automobile operating history records shall be *filed with the department of administration*. *These records shall show the purchase price of the vehicle, and the items of expense incurred in the operation of the vehicle, including the expenses of gas, oil, repairs, labor, storage and service. The department of administration shall prepare a complete summary of the operating cost and history record of all state-owned vehicles and trucks for each fiscal year.*"

Section 179. Section 53-520, R.C.M. 1947, is amended to read as follows:

**"53-520. Certain motor vehicles exempted.** *This chapter does not apply to a motor vehicle used in the service of the governor, the attorney general or the highway patrol.*"

Section 180. Section 53-521, R.C.M. 1947, is amended to read as follows:

**"53-521. Violation a misdemeanor — dismissal.** A state officer or employee violating this *chapter* is guilty of a misdemeanor, and upon conviction *shall* be dismissed from state employment."

Section 181. Section 53-620, R.C.M. 1947, is renumbered 32-3205.1, and is amended to read as follows:

**"32-3205.1. Blank forms furnished county treasurers.** *The department shall furnish all county treasurers with the following:*

1. Blank application forms and affidavit forms outlining and providing for the information needed in each classification of registration required.
2. Registration, license or certificates in a form determined most suitable by the *department*.
3. *The other forms, stickers, certificates or blanks the department considers necessary to carry out chapters 32 and 33 of this title.*"

Section 182. Section 53-624, R.C.M. 1947, is renumbered 32-3318, and is amended to read as follows:

**"32-3318. Enforcement.** *The highway patrol, and any designated employee of the department of highways, shall enforce chapters 32 and 33 of this title, add those persons shall examine and inspect the motor vehicles operating upon the highways in this state, and regulated by those chapters, to ascertain whether or not those chapters are being complied with.*"

Section 183. Section 53-626, R.C.M. 1947, is renumbered 32-3319, and is amended to read as follows:

**"32-3319. Exemptions.** Motor vehicles operating exclusively for transportation of persons for hire within the limits of incorporated cities or towns and within fifteen (15) miles from such limits *are exempt from chapters 32 and 33 of this title*; motor vehicles brought or driven into Montana by a nonresident migratory bona fide agricultural worker temporarily employed in agricultural work in this state where *those* motor vehicles are used exclusively for transportation of agricultural workers *are also exempt from those chapters*. Vehicles lawfully displaying a licensed dealer's plate as provided in section 53-122 *are exempt from those chapters* when moving to or from a dealer's place of business when unladen or laden with dealer's property only, and, in the case of vehicles having a gross laden weight of less than twenty-four thousand (24,000) pounds, while in the process of demonstration in the course of the dealer's business."

Section 184. Section 53-627, R.C.M. 1947, is renumbered 32-3320, and is amended to read as follows:

**"32-3320. Purpose of fees — effective date.** The fees provided in *chapters 32 and 33 of this title* are in consideration of the right to use the highways of the state of Montana."

Section 185. Section 53-632, R.C.M. 1947, is renumbered 32-3407, and is amended to read as follows:

**"32-3407. Display of plates.** A vehicle or combination of vehicles transported over the highways of the state by a permit holder shall display in a prominent position thereon, the distinctive transit plates or devices, the towing vehicle displaying such on the front thereof and a towed vehicle on the rear thereof."

Section 186. Section 53-633, R.C.M. 1947, is renumbered 32-3408, and is amended to read as follows:

**"32-3408. List of holders of permits and transit plates to be furnished department of highways by department of justice.** The *department of justice* shall furnish the *department of highways* a list of the permit holders and of the transit plates or devices issued to *those* permit holders."

Section 187. Section 53-638.1, R.C.M. 1947, is renumbered 53-639.2, and is amended to read as follows:

**"53-639.2. Exemptions of vehicles not capable of operation on highways.** Track-type tractors, other track mounted machinery and equipment, road rollers, and other similar equipment and machinery which cannot be self-propelled or towed upon the highways of this state and which must be transported by some type of hauling unit, *are not subject to this title or chapter 32 and 33 of Title 32.*"

Section 188. Section 53-640, R.C.M. 1947, is amended to read as follows:



**"53-640. Issuance of identification plate and receipt — contents.** The county treasurer shall issue to *an applicant for an equipment identification plate* a single metal plate with a distinguishing number and a receipt for the fee collected, which receipt shall contain the name and address of the applicant, the number of the plate issued, the serial number of the equipment and a brief description of *that equipment*."

Section 189. Section 53-642, R.C.M. 1947, is amended to read as follows:

**"53-642. "Special mobile equipment" defined.** "Special mobile equipment" means every vehicle which is not designed and used primarily for the transportation of persons or property on a public highway and which is operated or moved over the highway from construction project to construction project, and not removed from the confines and haul roads thereof, except for movement from construction project to storage yard, from storage yard to construction project, or from storage yard or construction project to point of repair or maintenance and return. Special mobile equipment includes, but is not limited to portable air compressors, air drills, asphalt spreaders, gravel crushing equipment and hot plant equipment, buckets, belt and front-end loaders, track laying tractors, ditchers, leveling graders, finishing machines, motor graders, paving mixers, earth moving scrapers and carry-alls, lighting, generating and power plants, welders, pumps, power shovels and draglines, cranes, crane mounted heel-boom log loaders, fork-lift trucks, lumber carriers, bunk-houses, tool houses, shop cars, oil distributors, scales and scale houses, and conveyors. It also includes self-propelled tractor-drawn earth moving equipment, dump trucks and tractor-dump trailer combinations which, because of excess width, height, length, or unladen weight, cannot be moved over a public highway without a permit as provided in *sections 32-1127.1 through 32-1127.10*, and which are operated unladen except within the boundaries of the project limits, as defined by the contract, and adjacent haul roads. However, the term "special mobile equipment" *does not* include a vehicle such as a truck, truck-tractor, trailer, semitrailer, house trailer, or house car, designed for the transportation of persons or property."

Section 190. Section 53-702, R.C.M. 1947, is amended to read as follows:

**"53-702. Definitions.** As used in this act:

(1) "Commercial vehicle" means *a* vehicle which is operated in more than one (1) state and used for the transportation of persons for hire, compensation or profit, or designed or used primarily for the transportation of property.

(2) "Jurisdiction" means and includes a state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a foreign country and a state or province of a foreign country.

(3) "Owner" means a person who holds the legal title to a vehicle, or in the event a vehicle is the subject of an agreement for the conditional sale thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested

in the conditional vendee, or in the event a vehicle is subject to a lease, contract or other legal arrangement vesting right of possession or control, for security or otherwise, or in the event a mortgagor of a vehicle is entitled to possession, then the owner shall be deemed to be such person in whom is vested right of possession or control.

(4) "*Legal residence*", means a jurisdiction where the person lives or conducts his business. *This* residence need not be coupled with the intent to live or conduct the business there on a permanent basis. The use of the word "residence" in this act shall be confined to the definition given, and shall not be confused with the word "domicile." This definition of "residence" further recognizes that a person may have several residences, but only one (1) domicile.

(5) (a) "Properly registered," as applied to place of registration means:

(i) The jurisdiction where the person registering the vehicle has his legal residence, or

(ii) In the case of a commercial vehicle, the jurisdiction in which it is registered if the commercial enterprise in which *the* vehicle is used has a place of business therein and, if the vehicle is most frequently dispatched, garaged, serviced, maintained, operated or otherwise controlled in or from *the* place of business and, the vehicle has been assigned to *the* place of business, or

(iii) In the case of a commercial vehicle, the jurisdiction where, because of an agreement or arrangement between two (2) or more jurisdictions, or pursuant to a declaration, the vehicle has been registered as required by *that* jurisdiction.

(b) In case of doubt or dispute as to the proper place of registration of a vehicle, the *board of highway appeals* shall make the final determination, but in making *the* determination, the board may confer with departments of the other jurisdictions affected.

(6) "Fleet" means two (2) or more commercial vehicles.

(7) "Person," for purposes of this act, means every natural person, firm, copartnership, association, or corporation.

(8) "Motor vehicle" means every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails.

(9) "Vehicle" means every device in, upon or by which any person or property is or may be transported or drawn upon a highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks.

(10) "Preceding year" means a period of twelve (12) consecutive months fixed by the *department of highways*, which period shall be within sixteen (16) months immediately preceding the commencement of the registration or license year for which proportional registration is sought; the *department* in fixing *the* period shall make it conform to the terms, conditions

and requirements of any applicable agreement or arrangements for the proportional registration of vehicles."

Section 191. Section 53-704, R.C.M. 1947, is amended to read as follows:

"53-704. **Authority of department of highways.** The *department of highways* may execute or make arrangements, agreements or declarations to carry out this *chapter*."

Section 192. Section 53-705, R.C.M. 1947, is amended to read as follows:

"53-705. **Authority for reciprocity agreements, provisions, reciprocity standards.** The *department* may enter into an agreement or arrangement with the duly authorized representatives of other jurisdictions, granting to vehicles or to owners of vehicles which are properly registered or licensed in *those* jurisdictions, and for which evidence of compliance is supplied, benefits, privileges and exemptions from payment, wholly or partially, of any taxes, fees, or other charges imposed upon *those* vehicles or owners with respect to the operation or ownership of *the* vehicles under the laws of this state. *The* agreement or arrangement shall provide that vehicles properly registered or licensed in this state, when operated upon highways of *those* other jurisdiction, shall receive exemptions, benefits and privileges of a similar kind or to a similar degree as are extended to vehicles properly registered or licensed in *the* jurisdiction when operated in this state. *The* agreement or arrangement shall, in the judgment of the *department*, be in the best *interests and* fair and equitable to this state and *its* citizens determined on the basis and recognition of the benefits which accrue to the economy of this state from the uninterrupted flow of commerce."

Section 193. Section 53-707, R.C.M. 1947, is amended to read as follows:

"53-707. **Proportional registration of fleet vehicles.** If a jurisdiction permits or requires the licensing of fleets of vehicles in interstate or combined interstate and intrastate commerce and payment of registration fees, license fees, taxes or other fixed fees on *those vehicles* on an apportionment basis commensurate with and determined by the miles traveled on and the use made of *the* jurisdiction's highways, as compared with the miles traveled on and the use made of other jurisdiction's highways or any other equitable basis of apportionment, and exempts vehicles registered in *any* other jurisdiction under *this* apportionment basis from the requirements of full payment of its own registration, license fees, taxes or other fixed fees, then the *department* may, by agreement, adopt such exemption with respect to vehicles of *these* fleets, whether owned by residents or nonresidents of this state and regardless of where based. *An agreement*, under *the* terms, conditions or restrictions the *department* considers proper, may provide that owners of vehicles operated in interstate or combined interstate and intrastate commerce in this state be permitted to pay registration, license fees, taxes or other fixed fees on an apportionment basis, commensurate with and determined by the miles traveled on and the use made of the highways of this state as compared

with the use made of the highways of other jurisdictions or any other equitable basis of apportionment. *This agreement may not authorize, nor be construed to authorize a vehicle so registered to be operated in intrastate commerce in this state unless the owner of the vehicle has been granted intrastate authority or rights by the public service commission, if a grant is otherwise required by law. The department may adopt rules it considers necessary to carry out and administer this section, and the registration of fleet vehicles under this chapter is subject to the rights, terms and conditions granted by or contained in any applicable agreement, arrangement or declaration made by the department.*"

Section 194. Section 53-708, R.C.M. 1947, is amended to read as follows:

**"53-708. Declarations of extent of reciprocity.** In the absence of an agreement or arrangement with another jurisdiction, the *department* may examine the laws and requirements of *the* jurisdiction and declare the extent and nature of exemptions, benefits, and privileges to be extended to vehicles properly registered or licensed in *the* other jurisdiction, or to the owners of *the* vehicles, which *are*, in the judgment of the *department* in the best *interests and* fair and equitable to this state and *its* citizens determined on the basis and recognition of the benefits which accrue to the economy of this state from the uninterrupted flow of commerce."

Section 195. Section 53-712, R.C.M. 1947, is amended to read as follows:

**"53-712. Proportional registration of fleet vehicles, application, fee-formula and payment.** (1) *An* owner engaged in operating one (1) or more fleets may, *instead* of registration of vehicles under other sections of *this title*, register and license each fleet for operation in this state by filing an application with the *department* which shall contain the following information, and other information pertinent to vehicle registration the *department* requires:

(a) Total fleet miles. This shall be the total number of miles operated in all jurisdictions during the preceding year by the vehicles in *the* fleet during *the* year.

(b) In-state miles. This shall be the total number of miles operated in this state during the preceding year by the vehicles in *the* fleet during *the* year.

(c) A description and identification of each vehicle of *the* fleet which is to be operated in this state during the registration year for which proportional fleet registration is requested.

(2) The application for each fleet shall be accompanied by a fee payment computed as follows:

(a) Divide in-state miles by total fleet miles.

(b) Determine the total amount necessary to register each vehicle in the fleet for which registration is requested, based on the regular annual registration fees prescribed by section 53-122, *Title 32, chapter 32 and chapter 33 and the property taxes which are due on the fleet.*

(c) Multiply the sum obtained under subsection (2) (b) by the fraction obtained under subsection (2)(a)."

Section 196. Section 53-713, R.C.M. 1947, is amended to read as follows:

**"53-713. Registration and identification of proportionally registered vehicles, effect of such registration.** (1) The *department* shall register the vehicles so described and issue a license plate or plates, or a distinctive sticker, or other suitable identification device, for each vehicle described in the application upon payment of the appropriate fees, and property taxes as provided by law, for *the* application and for the stickers or devices issued. A fee of two dollars (\$2) shall be paid for each license plate, sticker or device issued for each proportionally registered vehicle. A registration card shall be issued for each proportionally registered vehicle. *The* registration card shall, in addition to other information required by Title 53, bear upon its face the number of the license, sticker or other device issued for *the* proportionally registered vehicle and shall be carried in *the* vehicle at all times.

(2) Fleet vehicles so registered and identified shall be deemed fully licensed and registered in this state for any type of movement or operation, except that, in those instances in which a grant of authority is required for intrastate movement or operation, *the* vehicle *may not* be operated in intrastate commerce in this state unless the owner has been granted intrastate authority by the public service commission and unless the vehicle is being operated in conformity with *that* authority."

Section 197. Section 53-716, R.C.M. 1947, is amended to read as follows:

**"53-716. Withdrawal of fleet vehicles, credits and accounting.** If a vehicle is withdrawn from a proportionally registered fleet during the period for which it is registered, the owner of *the* fleet shall notify the *department of that fact* on forms prescribed by the *department*. The *department* may require the owner to surrender proportional registration cards and other identification devices which have been issued with respect to *that vehicle*. If a vehicle is permanently withdrawn from a proportionally registered fleet because it has been destroyed, sold or otherwise completely removed from the service of the registrant, the unused portion of the gross vehicle weight fees paid with respect to *that vehicle shall be credited to the proportional registration account of the owner. This unused portion shall* equal the amount paid with respect to *the* vehicle when it was first proportionally registered in *the* registration year, reduced by 1/12 of the total annual gross vehicle weight fee of *the* vehicle for each calendar month and fraction thereof elapsing between the first day of the month of the current year in which the vehicle was registered and the date the notice of withdrawal is received by the *department*. This credit shall be applied against liability for subsequent additions to be prorated during *the* registration year or for additional fees due upon audit under *section* 53-719. If a credit is less than five dollars (\$5.00), *it may not* be made or entered. In no event *may the* amount be credited against fees other than those for *the* registration year, nor *may* any amount be subject to refund."

Section 198. Section 53-717, R.C.M. 1947, is amended to read as follows:

**"53-717. New fleet — estimated mileage.** The initial application for proportional registration of a fleet shall state the mileage data with respect to *the* fleet for the preceding year in this and other jurisdictions. If operations were *not* conducted with *this* fleet during the preceding year, the application shall contain a full statement of the proposed method of operation and estimates of annual mileage in this state and other jurisdictions. The *department* shall determine the in-state and total fleet miles to be used in computing the fee payment for the fleet. The *department* may evaluate and adjust the estimate in the application if it is not satisfied as to the correctness of *the estimate*."

Section 199. Section 53-718, R.C.M. 1947, is amended to read as follows:

**"53-718. Fleet registration may be denied.** The *department* may refuse to accept proportional registration applications for the registration of vehicles based in, or owned by residents of, another jurisdiction if the *department finds* that *the* other jurisdiction does not grant similar registration privileges to fleet vehicles based in or owned by residents of this state."

Section 200. Section 53-719, R.C.M. 1947, is amended to read as follows:

**"53-719. Preservation of proportional registration records.** An owner whose application for proportional registration has been accepted shall preserve the records on which the application is based for a period of four (4) years following the year or period upon which *the* application is based. Upon request of the *department*, the owner shall make *these* records available to the *department* for audit as to accuracy of computations and payments, or pay the reasonable costs of an audit at the *owner's* home office by *an* appointed representative of the *department*. The *department* may make arrangements with agencies of other jurisdictions administering motor vehicle registration laws for joint audits of *the* owner."

Section 201. Section 53-721, R.C.M. 1947, is amended to read as follows:

**"53-721. Suspension of reciprocity benefits.** Agreements, arrangements or declarations made under this *chapter* may include provisions authorizing the *department* to suspend or cancel the exemptions, benefits or privileges granted thereunder to a person who violates any of the conditions or terms of *the* agreements, arrangements or declarations or who violates the laws of this state relating to motor vehicles, or rules lawfully *adopted* thereunder."

Section 202. Section 53-722, R.C.M. 1947, is amended to read as follows:

**"53-722. Agreements to be written, filed and available for distribution.** All agreements, arrangements or declarations or amendments thereto shall be in writing and shall be filed *with the department, and the department* shall provide copies for public distribution upon request."

Section 203. Section 53-724, R.C.M. 1947, is amended to read as follows:

**"53-724. Act part of and supplement to motor vehicle registration law.** This act *is* supplemental to the motor vehicle registration law of this state."

Section 204. Section 82A-701, R.C.M. 1947, is amended to read as follows:

**"82A-701. Department of highways — creation — head.** There is a department of highways. The department head is *a* director of highways *appointed by the governor in accordance with section 82A-106.*"

Section 205. There is a new section to be numbered 82A-701.1, R.C.M. 1947, which reads as follows:

**82A-701.1. Functions of department.** The department has responsibility for the administration of laws relating to public highways, including, but not limited to, laws on:

- (1) Speed and traffic regulations (Title 32, chapters 11 and 21);
- (2) Designation and construction of federal-aid and state highways (Title 32, chapters 24, 26, and 39);
- (3) State vehicle fees (Title 32, chapters 32 through 34);
- (4) Letting contracts for highway construction (Title 32, chapter 41);
- (5) Designation of controlled access highways (Title 32, chapter 43);
- (6) Regulation of junkyards (Title 32, chapter 45);
- (7) Regulation of outdoor advertising (Title 32, chapter 47);
- (8) State motor pool (Title 53, chapter 5);
- (9) Motor vehicle reciprocity (Title 53, chapter 7).

Section 206. Section 82A-704, R.C.M. 1947, is amended to read as follows:

**"82A-704. Board of highway appeals — creation — allocation — composition — designation.** (1) There is created a board of highway appeals.

(2) The board is allocated to the department for administrative purposes only as prescribed in section 82A-108.

(3) The board is composed of three (3) members appointed by the governor as prescribed in section 82A-112.

(4) The board is designated as a quasi-judicial board for purposes of section 82A-112."

Section 207. Section 89-3310, R.C.M. 1947, is amended to read as follows:

**"89-3310. Contracts for use of railroads and highways.** A city, town or county may contract with *a* railroad company or with the *depart-*

*ment of highways* for the use of railroad or highway rights of way and embankments, and other railroad or highway property which can be utilized by the city, town or county for the purpose of water conservation or flood control or protection as part of its water conservation or flood control system, or both, for a period not exceeding ninety-nine (99) years."

Section 208. Section 93-9913, R.C.M. 1947, is amended to read as follows:

"93-9913. **The date with respect to which compensation shall be assessed.** For the purpose of assessing compensation the right thereto shall be deemed to have accrued at the date of the service of the summons, and its actual value as of that date shall be the measure of compensation for all property to be actually taken, and the basis of depreciation in value of property not actually taken, but injuriously affected. This shall not be construed to limit the amount of compensation payable by the *department of highways* under the provisions of any legislation enacted pursuant to the Federal Highway Beautification Act of 1965. If an order be made letting the plaintiff into possession, as provided in section 93-9920, the full amount finally awarded shall draw lawful interest from the date on which the property owner surrenders possession of the property in accordance with the terms of such order to the earlier of the following dates:

(a) The date on which the right to appeal to the Montana supreme court expires, or if appeal is filed, to the date of final decision by the supreme court, or

(b) The date on which the property owner withdraws from court the full amount finally awarded.

If the property owner withdraws from court a fraction of the amount finally awarded, interest on such fraction shall cease on the date it is withdrawn but interest on the remainder of the amount finally awarded shall continue to the earlier of the aforesaid dates defined in (a) and (b) of this section. None of the amount finally awarded shall draw interest after the date on which the right to appeal to the Montana supreme court expires. No improvements put upon the property, subsequent to the date of the service of summons, shall be included in the assessment of compensation or depreciation in value, nor shall the same be used as the basis of computing such compensation or depreciation."

Section 209. Sections 32-101, 32-301, 32-315, 32-414, 32-417, 32-508, 32-527, 32-712, 32-716, 32-1001, 32-1117, 32-1118, 32-1120, 32-1121, 32-1122, 32-1123, 32-1127, 32-1129, 32-1401, 32-1619, 32-2403, 32-2405, 32-2417, 32-2418, 32-2501 through 32-2503, 32-2701 through 32-2716, 32-3501 through 32-3509, 32-3919, 32-3921, 32-3922, 32-4402, 53-703, 82A-702, 82A-703, and 82A-705 through 82A-708, R.C.M. 1947, are repealed.

Approved March 28, 1974



**CHAPTER NO. 317****AN ACT TO PROVIDE FOR THE REGULATION AND LICENSING OF PERSONS PRACTICING ACUPUNCTURE IN MONTANA; AND PROVIDING PENALTIES.**

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is a new section to be numbered 66-3401, R.C.M. 1947, which reads as follows:

66-3401. **Citation of act.** This act shall be known and may be cited as the "Acupuncture Practice Act of 1974."

Section 2. There is a new section to be numbered 66-3402, R.C.M. 1947, which reads as follows:

66-3402. **Legislative finding and purpose.** The legislature finds and declares that the practice of acupuncture in Montana affects the public health, safety, and welfare and should therefore be subject to regulation and control in the public interest in order to protect the public from the unauthorized and unqualified practice of acupuncture and from unprofessional conduct by persons licensed to practice acupuncture.

Section 3. There is a new section to be numbered 66-3403, R.C.M. 1947, which reads as follows:

66-3403. **Definitions.** As used in this act:

(1) The term "board" means the Montana state board of medical examiners.

(2) The term "acupuncture" means the treatment of the human body by means of mechanical, thermal or electrical stimulation effected by the insertion of solid needles.

(3) The term "acupuncturist" means a natural person licensed by the Montana state board of medical examiners to practice acupuncture.

(4) The term "school of acupuncture" means a school where acupuncture is taught that has been recognized and designated by the Montana state board of medical examiners.

Section 4. There is a new section to be numbered 66-3404, R.C.M. 1947, which reads as follows:

66-3404. **License required.** From and after the effective date of this act no person may engage in the practice of acupuncture in this state unless he is licensed under the provisions of this act.

Section 5. There is a new section to be numbered 66-3405, R.C.M. 1947, which reads as follows:

66-3405. **Powers and duties of board.** In addition to all other powers and duties conferred and imposed upon the board by this act, the board shall have and exercise the following powers and duties:

(1) to promulgate, under the applicable provisions of the Montana Administrative Procedure Act, (82-4201 to 82-4225) rules and regulations which it determines to be necessary to carry out the provisions of this act;

(2) to adopt a schedule of minimum educational requirements, not inconsistent with the provisions of this act;

(3) to prescribe forms for application for examination and license;

(4) to prepare and supervise examination of applicants for license to practice acupuncture;

(5) to obtain the services of professional examination agencies in lieu of its own preparation of the examinations;

(6) to issue, revoke and suspend licenses as hereinafter provided;

(7) to hold hearings, issue subpoenas, administer oaths and take testimony and proofs concerning all matters within its jurisdiction;

(8) to issue commissions to take depositions of witnesses who are sick or absent from the state; and

(9) to adopt a seal, which shall be affixed to all licenses issued by the board and other official papers.

Section 6. There is a new section to be numbered 66-3406, R.C.M. 1947, which reads as follows:

**66-3406. Application for examination — fee — requirements.**

(1) Each person desiring to practice acupuncture in this state shall make application for examination with the secretary of the board upon the forms and in the manner as prescribed by the board, at least thirty (30) days before the date set by the board for the commencement of the examination. An examination fee of fifty dollars (\$50) shall accompany the application.

(2) A person making application shall furnish the board evidence that he:

(a) is at least eighteen (18) years of age;

(b) is a citizen of the United States, or has filed a properly executed declaration of intention to become a citizen of the United States;

(c) is of good moral character, as determined by the board; and

(d) is the graduate of an approved school of acupuncture or has completed a course in acupuncture approved by the board.

Section 7. There is a new section to be numbered 66-3407, R.C.M. 1947, which reads as follows:

**66-3407. Examination — scope of examination — retention and inspection of examination papers — reexamination.** (1) Any applicant meeting the requirements of this act shall be admitted to an assembled examination to be conducted by the board. An examination shall be held at least twice a year. The examination shall be practical in character and sufficiently thorough to test the fitness of the applicant to practice acupuncture. The examination shall be in writing, insofar as the board shall deem practicable, and shall cover such subjects as prescribed in the curriculum and taught in the schools which offer courses leading to the

degree of doctor of acupuncture, master of acupuncture, master acupuncturist, or its equivalent. Demonstration of the applicant's skill in the practice of acupuncture may also be required.

(2) Examination papers of any applicant shall be retained two (2) years by the secretary of the board and may then be destroyed. While retained the examination papers shall be open to inspection only by board members, the applicant or by some person appointed by the applicant to examine them, or by a court of competent jurisdiction in a proceeding where the question of the contents of the papers is properly involved.

(3) Any applicant failing to pass his first examination before the board may, at any subsequent meeting of the board held for the purpose of examining candidates, if otherwise qualified, take subsequent examinations upon payment of the fee of twenty-five dollars (\$25) for each examination.

Section 8. There is a new section to be numbered 66-3408, R.C.M. 1947, which reads as follows:

66-3408. **License — fee.** All applicants successfully passing the examination required by this act shall be registered as licensed acupuncturists in the board register and, upon the payment of a twenty dollar (\$20) license fee shall be issued a certificate of license in such form as prescribed by the board. The certificate shall bear the official seal of the board.

Section 9. There is a new section to be numbered 66-3409, R.C.M. 1947, which reads as follows:

66-3409. **Reciprocity.** A license without examination may be issued by the board to any acupuncturist licensed or certified in another state where the licensing or certification requirements are substantially equivalent to the requirements of this act, upon payment of the license fee of twenty dollars (\$20) as herein provided.

Section 10. There is a new section to be numbered 66-3410, R.C.M. 1947, which reads as follows:

66-3410. **Term of license — renewal — fee — notice — cancellation.** (1) The license to practice acupuncture shall expire on December 31 of each calendar year and shall be renewed upon request of the licensee without examination. The request for renewal shall be on forms prescribed by the board and accompanied by a renewal fee of twenty dollars (\$20). The request and fee shall be in the hands of the secretary of the board not later than the expiration date of the license. Any person actively engaged in the military service of the United States and licensed to practice acupuncture as herein provided shall not be required to pay the annual renewal fee or make application for renewal until December 31 of the calendar year in which he returns from military service to civilian or inactive status.

(2) On or before December 1 of each calendar year the secretary of the board shall notify each licensee by letter, addressed to his last place of residence as the same appears on the records of the board, that his license will expire on December 31 following the date of notice unless

application for renewal, accompanied by the annual renewal fee, is received by the board on or prior to that date.

(3) Immediately following December 31 of each calendar year, the secretary shall notify all licensees from whom requests for renewal, accompanied by the renewal fee, have not been received that their licenses have expired and that they will be cancelled and revoked upon the records of the board, unless a request for renewal and reinstatement, accompanied by the renewal fee and an additional fee of five dollars (\$5), shall be in the hands of the secretary prior to February 1 following the expiration date.

(4) Immediately following February 1 of each calendar year, the secretary of the board shall cancel and revoke upon its records all licenses which have not been renewed or reinstated as provided by this act, and shall notify the licensees whose licenses are so revoked of such action.

(5) Any licensee who allows his license to lapse by failing to renew or reinstate the same as herein provided, may subsequently reinstate the same upon good cause shown to the satisfaction of the board and upon payment of all annual renewal fees then accrued plus an additional fee of five dollars (\$5) for each year following the cancelling of the license.

Section 11. There is a new section to be numbered 66-3411, R.C.M. 1947, which reads as follows:

**66-3411. Refusal to issue, suspension, revocation of license — probation — notice — hearing — reinstatement.** (1) The board may refuse to issue or may suspend or revoke a license issued pursuant to this act for any one (1) or any combination of the following causes:

(a) conviction of a felony or conviction of a violation of any state or federal law regulating the possession, distribution, or use of any controlled substance, as shown by a certified copy of record of the court;

(b) being adjudicated incompetent or insane;

(c) sustaining a physical or mental disability which renders further practice dangerous;

(d) habitual drunkenness or habitual addiction to the use of a controlled substance;

(e) gross malpractice;

(f) engaging in any dishonorable, unethical, or unprofessional conduct which may deceive, defraud, or harm the public, or which is unbecoming a person licensed to practice under this act;

(g) the obtaining of or any attempt to obtain a license or practice in the profession for money or any other thing of value by fraudulent misrepresentations;

(h) advertising by means of knowingly false or deceptive statement;

(i) advertising, practicing, or attempting to practice under a name other than one's own;

(j) using any false, fraudulent, or forged statement or document, or engaging in any fraudulent, deceitful, dishonest, or immoral practice in connection with the licensing requirements of this act; or

(k) violating or attempting to violate, or assisting or abetting the violation of, or conspiring to violate any provision of this act.

(2) Any person, including any member of the board, may file a sworn complaint with the secretary of the board against any person having a license to practice acupuncture in this state, charging him with the commission of any of the offenses set forth in subsection (1) of this section, which complaint shall set forth a specification of the charges. When such complaint is filed, the secretary shall mail a copy thereof to the person so accused, at his last address of record with the board, together with a written citation of the time and place of a hearing thereon, advising him that he may be present in person, and by counsel if he so desires, to offer evidence and be heard in his defense. The time fixed for hearing shall be not less than thirty (30) days from the date of mailing the notice. The contested case procedures of the Montana Administrative Procedure Act (82-4201 to 82-4225) shall apply to the notice and hearing requirements of section 11 [66-3411] of this act, except that neither common law nor statutory rules of evidence need apply, but the board may make rules designed to exclude repetitive, redundant or irrelevant testimony.

(3) At the time and place fixed for a hearing before the board as provided in subsection (2) of this section, or at any time and place to which the matter may be continued, the board shall receive evidence upon the subject under consideration and shall accord the person against whom charges are preferred a full and fair opportunity to be heard in his defense and shall after consideration adopt a resolution finding him guilty or not guilty of the matters charged. If the board finds that the conditions referred to in subsection (1) of this section do not exist with reference to the person or if he be found not guilty, the board shall dismiss the charges or complaint, but if the board does find that the conditions referred to in subsection (1) of this section do exist and the person is found guilty, the board shall:

- (a) revoke his license;
- (b) suspend his right to practice for a period not exceeding one (1) year;
- (c) suspend its judgment of revocation upon the terms and conditions to be determined by the board;
- (d) place him on probation; or
- (e) take such other action in relation to disciplining him as the board in its discretion may deem proper.

(4) The secretary of the board in all cases of revocation, suspension or probation shall enter in its records the facts of the action, and of any subsequent action of the board with respect thereto.

(5) Upon the expiration of the term of suspension, the licensee shall be reinstated by the board, provided the licensee shall furnish the board with evidence that he is then of good moral character and conduct and

restored to good health and that he has not practiced acupuncture in this state during the term of suspension. If the evidence fails to establish to the satisfaction of the board that the licensee is then of good moral character and conduct or if not restored to good health or if the evidence shows he has practiced acupuncture in this state during the term of suspension, the board shall revoke the license at a hearing, the notice and procedure of which shall be as hereinabove provided, which revocation shall then be final and absolute.

Section 12. There is a new section to be numbered 66-3412, R.C.M. 1947, which reads as follows:

**66-3412. Judicial review of board decisions.** Any person aggrieved by the final decision of the board may obtain judicial review of that decision. The judicial review procedure shall be the same as that for contested cases under the Montana Administrative Procedure Act (82-4201 to 82-4225).

Section 13. There is a new section to be numbered 66-3413, R.C.M. 1947, which reads as follows:

**66-3413. Deposit of fees.** All moneys received under this act shall be deposited with the state treasurer and credited to an account to be designated by him. No money shall be paid out of the fund except upon vouchers drawn against the fund, signed and certified to by the secretary of the board. All funds so credited shall be available to the board for the payment of expenses incurred by it in the performance of its duties under this act.

Section 14. There is a new section to be numbered 66-3414, R.C.M. 1947, which reads as follows:

**66-3414. Enjoining unlawful practice.** The practice of acupuncture in any way other than as defined in this act may be enjoined by the district court on petition by the board. In any such proceeding, it shall not be necessary to show that any person is individually injured by the actions complained of. If the respondent is found to have so practiced, the court shall enjoin him from so practicing unless and until he has been duly licensed. Procedure in such cases shall be the same as in any other injunction suit. The remedy by injunction is in addition to criminal prosecution and punishment.

Section 15. There is a new section to be numbered 66-3415, R.C.M. 1947, which reads as follows:

**66-3415. Acupuncture examinations for licensed doctors of medicine, osteopathy, chiropractic, dentistry and podiatry.** Nothing in this act shall be construed to require doctors of medicine, osteopathy, chiropractic, dentistry, and podiatry who are licensed in Montana to take further examinations in anatomy, physiology, chemistry, dermatology, diagnosis, bacteriology, materia medica, or other subjects which are or may be required for licensure in their respective professions; but no doctor of medicine, osteopathy, chiropractic, dentistry or podiatry shall practice acupuncture in this state unless and until he has completed a course and passed an examination in acupuncture as required by this act.

Section 16. There is a new section to be numbered 66-3416, R.C.M. 1947, which reads as follows:

66-3416. **Violation of act — penalty.** Any person who violates any of the provisions of this act or the rules and regulations of the state board of acupuncture shall be guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding six (6) months, or by a fine not exceeding five hundred dollars (\$500), or both.

Section 17. There is a new section to be numbered 66-3417, R.C.M. 1947, which reads as follows:

66-3417. **Severability clause.** If any provision of this act, or the application thereof to any person or circumstance is held to be invalid, such invalidity shall not affect any other provision or application of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Approved March 28, 1974

## CHAPTER NO. 318

AN ACT TO AMEND SECTION 32-2610, R.C.M. 1947, TO ALLOW THE DEPARTMENT OF HIGHWAYS TO INCREASE THE EXPENDITURES FOR FEDERAL AID INTERSTATE HIGHWAY SYSTEMS MADE IN ANY FINANCIAL DISTRICT TO THE EXTENT OF THREE HUNDRED PERCENT (300%) MORE THAN THE AMOUNT OF MONEY ALLOCATED TO SUCH DISTRICT.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 32-2610, R.C.M. 1947, is amended to read as follows:

"32-2610. **Increases in expenditures.** (1) The commission may increase the expenditures made in any financial district to the extent of:

(a) Twenty-five *percent* (25%) more than the amount of money allocated to such district in the latest year for the federal-aid primary system or the federal-aid secondary system.

(b) *Three hundred percent* (300%) more than the amount of money allocated to such district in the latest year for the federal-aid interstate highway system.

(2) The allocation of available state construction funds to any district for the next succeeding fiscal year shall be decreased by an amount equal to any increased expenditures."

Approved March 28, 1974.

## CHAPTER NO. 319

AN ACT LIMITING THE FEE TO BE PAID BY MUNICIPALLY OPER-

ATED UTILITIES FOR THE SUPPORT OF THE CONSUMER COUNSEL TO SIX-HUNDREDTHS OF ONE PERCENT (.06 OF 1%) OF GROSS OPERATING REVENUE; AND AMENDING SECTION 70-709, R.C.M. 1947.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 70-709, R.C.M. 1947, is amended to read as follows:

**"70-709. Disposition of fees—quarterly report and fee from regulated companies—penalty for violation—evidence of violation.** (1) There is an account in the earmarked revenue fund to which all fees collected hereunder shall be deposited and from which all appropriations to the office of the consumer counsel shall be paid.

(2) In addition to all other licenses, fees, and taxes imposed by law, all regulated companies shall, within 90 days after the close of each calendar quarter, file with the department of public service regulation and the department of revenue a statement in such form as the commission may determine, showing the gross operating revenue from all activities regulated by the commission within the state for that calendar quarter of operation or portion thereof, and shall at that time pay to the department of revenue a fee based on a fraction of the gross operating revenue reported, as determined by the department of revenue under subsection (3) of this section.

(3) Within thirty (30) days following enactment of the legislative appropriation for the office of the consumer counsel, the department of revenue shall:

(a) determine the total gross operating revenue generated by all regulated activities within this state for all regulated companies, for the previous fiscal year,

(b) compute the percentage of the amount determined in subsection (3) (a) which will produce an amount equal to the appropriation to the consumer counsel for each year of the appropriation, *except that no regulated company owned and operated by any municipal corporation within this state shall be required to pay a sum in excess of six-hundredths of one percent (.06 of 1%) of its gross operating revenue, and*

(c) give notice by mail to each regulated company of the percentage determined in subsection (3) (a) *and (b)* to be applied to the gross operating revenue reported under subsection (2) above, to determine the amount of the fee to be paid in each year of the appropriation.

(4) In the event the fee charged in any one (1) year of the biennium is in excess of the amount actually expended in that year, the excess shall be deducted from the amount required for the first year of the next biennial appropriation before the determination for that year required by subsection (3) (a) of this act is made.

(5) Any regulated company, or any officer or employee of any regulated company, who, with intent to evade any fee or any requirement of this



act or any lawful requirement of the commission thereunder, fails to pay the fee, or to make, render, sign or verify any statement, or to supply any information, within the time required by or under the provisions of this act, or who, with like intent, makes, renders, signs, or verifies any false or fraudulent statement, or supplies any false or fraudulent information, shall be liable to a penalty of not more than one thousand dollars (\$1,000), to be recovered by the attorney general, in the name of the state, by action in any court of competent jurisdiction, and shall also be guilty of a misdemeanor and shall, upon conviction, be fined not to exceed one thousand dollars (\$1,000) or be imprisoned in the county jail not to exceed one (1) year, or both, at the discretion of the court.

(6) The certificate of the department of revenue to the effect that a fee has not been paid, that a report has not been filed, or that information has not been supplied, as required by or under the provisions of this act, shall be prima facie evidence that such fee has not been paid, that such statement has not been filed, or that such information has not been supplied."

Approved March 28, 1974.

## CHAPTER NO. 320

AN ACT TO CREATE A LEGISLATIVE ADVISORY AND LIAISON COMMITTEE; DEFINING ITS DUTIES WITH RESPECT TO THE MONTANA STATE BUREAU OF MINES AND GEOLOGY; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. The legislature of the state of Montana recognizes that there is developing a mineral shortage of significant dimensions which will greatly intensify if present trends continue. It further recognizes that the Montana state bureau of mines and geology plays a unique and essential public service by collecting data, performing research, and providing public information related to Montana's mineral, fuel, and associated water resources, that can be utilized to minimize the effects of the impending mineral crisis. The legislature further recognizes the complex interrelationships that exist among state and federal agencies charged with the management of our natural resources, and that for the state bureau of mines and geology to successfully perform its vital functions, continuing review of its enabling legislation and the close cooperation, advice, supervision, and support of the legislature is required.

**Section 2. Legislative advisory and liaison committee created — appointment — members — term.** There is created a legislative advisory and liaison committee consisting of four (4) members. Two (2) members, of different political parties, shall be appointed by the speaker of the house from the membership of the house committee on natural

resources, and two (2) members, of different political parties, shall be appointed by the president of the senate from the membership of the senate committee on natural resources. The persons so appointed shall serve for the remainder of the term of office to which they have been elected.

**Section 3. Duties of committee.** The committee shall advise and assist the director of the Montana state bureau of mines and geology. The committee shall specifically advise and assist the director in preparing a revision of the laws of Montana relating to the organization, operation, and duties of the bureau and shall report its findings to the first regular session of the Forty-fourth Legislature. The duties of the committee shall terminate upon presentation of its report.

**Section 4. Effective date.** This act is effective on its passage and approval.

Approved March 28, 1974

## CHAPTER NO. 321

AN ACT TO AMEND SECTION 66-2902, R.C.M. 1947, TO DEFINE PRACTICE OF MASSAGE; TO AMEND SECTION 66-2908, R.C.M. 1947, TO PROVIDE THE BOARD AUTHORITY TO SUSPEND LICENSE FOR FAILURE TO RENEW; TO AMEND SECTION 66-2909, R.C.M. 1947, TO ALLOW A THIRTY (30) DAY GRACE PERIOD FOR LICENSE RENEWAL AND TO REQUEST A TEN DOLLAR (\$10) LATE RENEWAL FEE; TO AMEND SECTION 66-2910, R.C.M. 1947, TO INCREASE THE PER DIEM FOR BOARD MEMBERS TO TWENTY-FIVE DOLLARS (\$25); TO AMEND SECTION 66-2914, R.C.M. 1947, BY REMOVING THE AUTOMATIC EXEMPTION FOR CERTAIN ORGANIZATIONS AND TO REQUIRE ALL PERSONS AND ORGANIZATIONS NOT SPECIFICALLY EXEMPT TO APPLY FOR EXEMPTION TO BE GRANTED AT BOARD'S DISCRETION; AND AMENDING SECTIONS 66-2904, 66-2905 AND 66-2906, R.C.M. 1947.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 66-2902, R.C.M. 1947, is amended to read as follows:

"66-2902. **Definitions.** *Unless the context requires otherwise, in this act:* (1) "Masseur" includes persons engaged in the occupation of massage and includes the feminine "masseuse."

(2) "Massage" means the trained ability of body massage by hands for the purpose of body massage, the use of oil rubs, salt glows, hot and cold packs, tub, shower or cabinet baths; and the application to the patron by the operator's hands by variations of touch, stroking, friction, kneading, vibration, percussion, and gymnastics.

(3) *"Practice of massage" means to perform massage as above defined, for remuneration or hire, or to advertise, by the use of word massage in any of its derivations or genders, or by any other means, the practice of massage.*

(4) *"Massage establishment" means a place in which any of the above procedures and methods are administered or used.*

(5) *"Board" means the board of masseurs."*

Section 2. Section 66-2904, R.C.M. 1947, is amended to read as follows:

**"66-2904. Organization of board — meetings — powers and duties.** The board shall convene after each appointment and elect a president, a vice-president, and a secretary-treasurer from their membership.

The board shall hold a regular meeting in each year, at the city of Helena, Montana, and shall hold special meetings at such times and places as the board, or a majority of the membership thereof, may designate; provided, that not more than four (4) meetings shall be held in any one (1) year. A majority of the board shall constitute a quorum.

The board shall have authority to administer oaths, take affidavits, summon witnesses, and take testimony as to matters coming within the scope of the board. It shall adopt a seal, which shall be affixed to all licenses issued by them, and shall from time to time adopt such rules and regulations as they deem proper and necessary for the performance of their duties, and they shall adopt a schedule of minimum educational requirements, not inconsistent with the provisions of this law, which shall be without prejudice, partiality, or discrimination as to the different *approved* schools of massage training. The secretary of said board shall keep a record of the proceedings of the board, which shall at all times be open to public inspection.

A license to engage as a masseur within this state shall be issued to the individual members of said board at the first meeting of said board upon payment of the regular fee as provided for in this act."

Section 3. Section 66-2905, R.C.M. 1947, is amended to read as follows:

**"66-2905. Practicing without a license — license without examination.** It shall be unlawful for any person to *practice* the occupation of massage *in any of its arts and sciences* in this state without first obtaining a license as provided in this act. All persons engaged in the occupation of massage within this state for three (3) months prior to the passage of this law who have completed a course in massage and shall accompany said application with satisfactory evidence of good character and reputation may be licensed without further examination.

When application for examination for license is regularly filed with the board, as provided in this act, the board may issue to the applicant a temporary permit to engage in the occupation of massage, which certificate shall be good until the next meeting of the board."

Section 4. Section 66-2906, R.C.M. 1947, is amended to read as follows:

**"66-2906. Application and fees for license.** Any person wishing to engage in the occupation of a masseur in this state after August 1, 1967, except those licensed under section 66-2905, shall make application to said board through the secretary-treasurer thereof, and upon such form and such manner as may be prescribed and directed by the board, at least fifteen (15) days prior to any meeting of said board. Each applicant shall hold a diploma or credentials issued by a recognized, approved school of massage, certifying not less than one thousand (1,000) hours of study satisfactory to said school. Application shall be made in writing and shall be sworn to by some officer authorized to administer oaths, and shall recite the history of applicant's educational qualifications, how long he has studied massage, from what school he holds a certificate, and the length of time he has engaged in the occupation of massage, accompanying the same with proof thereof by a diploma or certificate and shall accompany said application with satisfactory evidence of good character and reputation.

There shall be paid to the secretary-treasurer of the board, by each applicant for a license, a fee of thirty-five dollars (\$35) which shall accompany the application. Any applicant failing to pass said requirements shall be entitled within six (6) months to a re-examination upon payment of an additional fee of ten dollars (\$10) but upon a third failure may not reapply *for a period of one (1) year.*"

Section 5. Section 66-2908, R.C.M. 1947, is amended to read as follows:

**"66-2908. Refusal, suspension, or revocation of license.** The board may, after due hearing, refuse to grant, *suspend*, revoke or renew any license provided for in this act to a person, otherwise qualified, who obtained said license by fraudulent representation, for incompetency in practice, for use of untruthful or improbable statements to patrons or in his advertisements, for habitual intoxication, *for failure to renew*, or for unprofessional and immoral conduct, but said board may reissue a license after a lapse of not less than six (6) months, if in its judgment such act or acts and/or conditions of disqualification shall have been remedied. It shall be a violation of this act for any person engaged in the occupation of a masseur to advertise or assert as a licensee under this act that they diagnose or treat any disease, injury or illness."

Section 6. Section 66-2909, R.C.M. 1947, is amended to read as follows:

**"66-2909. Renewal of license.** Each license shall expire on the last day of December in each year and shall be renewed then or thereafter, by the board, upon payment of a renewal fee of not less than ten dollars (\$10) or more than twenty-five dollars (\$25) as set by the board. *Any licensee who fails to renew on or before December 31 of each year shall be required to pay, in addition to the renewal fee, a late renewal fee, in an amount not to exceed ten dollars (\$10). Failure to so renew within thirty (30) days following December 31 shall be cause for suspension or revocation of the license.*"

Section 7. Section 66-2910, R.C.M. 1947, is amended to read as follows:

"66-2910. **Disposition of fees — receipts and disbursements.** All examination and renewal fees received by the board under this act shall be paid to the secretary-treasurer of said board, who shall at the end of each month deposit the same with the state treasurer, and the state treasurer shall place all money so received in an account in the earmarked revenue fund to the credit of the board and shall pay the same out in warrants drawn by the state auditor, upon approved vouchers issued and signed by the president and secretary-treasurer of said board. All money so received and placed in said fund may be used by the board in defraying their expenses in carrying out the provisions of this act.

The secretary-treasurer shall keep a true and accurate account of all funds received and all vouchers issued by the board; and on the first day of December of each year, shall file with the governor of the state a report of all receipts and disbursements and the proceedings of said board for the fiscal year.

The members of said board shall receive a per diem of *twenty-five* dollars (\$25) for each day during which they shall be actually engaged in the discharge of their duties, and mileage *as set forth in section 59-801, R.C.M. 1947* for each mile necessarily traveled in going to and from any meeting of said board.

Per diem and mileage and all other expenses necessarily connected with said board shall be paid only out of the earmarked revenue fund of the board."

Section 8. Section 66-2914, R.C.M. 1947, is amended to read as follows:

"66-2914. **Exemptions.** The following classes of persons are exempt from this act:

1. Persons authorized by the laws of this state to practice medicine, surgery, osteopathy, chiropractic or chiropody.

2. Persons who are registered or licensed under the laws of this state as nurses, practical nurses, physical therapists, barbers or cosmetologists.

3. *Educational institutions maintaining a full-time faculty with a varied curriculum.*

4. *Athletic clubs and others who apply for and acquire from the board an exemption. Such an exemption may be granted or denied at the discretion of the board in carrying out the purposes of this act.*

5. *Those persons who may have qualified for exemption under prior law shall be required by this act to qualify for exemption in the manner stated in this section before their exemption may be continued."*

Approved March 28, 1974

## CHAPTER NO. 322

AN ACT MAKING CERTAIN ACTS OF BREWERS ILLEGAL; PROVID-

ING MANDATORY CONTRACT PROVISIONS; ALLOWING TRANSFERS OF INTEREST IN WHOLESALER BUSINESS; DELINEATING WHEN A CONTRACTUAL RELATIONSHIP EXISTS; GRANTING INJUNCTIVE RELIEF; AND PROVIDING THAT ALL AGREEMENTS, CONTRACTS OR FRANCHISES BE FILED WITH THE DEPARTMENT OF REVENUE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is a new section to be numbered 4-317.2, R.C.M. 1947, which reads as follows:

4-317.2. **Illegal acts by brewers defined.** It is unlawful for any brewer or any officer, agent or representative of any brewer:

(1) to coerce, or attempt to coerce, or persuade any person licensed to sell beer at wholesale, to enter into any agreement or to take any action which would violate or tend to violate any of the laws of this state, or any rules promulgated by the department of revenue;

(2) to sell its products in the state without a written contract which conforms to the provisions of this act with each appointed licensed wholesale distributor;

(3) to designate or allow more than one (1) wholesale distributor to sell or distribute a specific brand of the brewer's products to retail licensees in the same area, provided that nothing herein shall prohibit the brewer from designating more than one (1) wholesale distributor to sell or distribute different brands of the same manufacturer to retail licensees in the same area; and

(4) to cancel or terminate except for just cause or in accordance with the current terms and standards established by the brewer then equally applicable to all wholesalers, any agreement or contract, written or oral, or the franchise of any wholesaler existing on January 1, 1974, or thereafter entered into, to sell beer manufactured by the brewer. A brewer may, notwithstanding the preceding sentence, make reasonable classifications among wholesalers. If a brewer cancels or terminates a wholesaler's franchise, the brewer has the burden of proving the classification was reasonable and not arbitrary. After its effective day, this act shall be a part of any franchise, contract or agreement or understanding, whether written or oral, between any wholesaler of beer licensed to do business in this state and any manufacturer doing business with the licensed wholesaler just as though the provisions had been specifically agreed upon between the wholesaler and the manufacturer.

Section 2. There is a new section to be numbered 4-317.3, R.C.M. 1947, which reads as follows:

4-317.3. **Contracts, agreements, franchises — mandatory provisions.** All contracts, agreements or franchises between a brewer and a wholesaler shall specifically set forth or contain the following:

(1) The brewer, or any officer, agent or representative of any brewer,

and the wholesaler involved mutually shall determine the size or extent of the area in which the wholesaler may sell or distribute the products of the brewer to the retail licensees. Said territory will be the territory agreed upon between the wholesaler and brewer, and may not be changed without the mutual consent of both the wholesaler and brewer.

(2) The agreed upon brands of the brewer to be sold by the wholesaler.

(3) The brewer recognizes that the wholesaler is free to manage his business in the manner the wholesaler deems best, and that this prerogative vests in the wholesaler the exclusive right to establish selling prices, to select the brands he wishes to handle, to determine the effort and resources the wholesaler will exert to develop and promote the sale of the brewer's products handled by the wholesaler.

(4) A procedure for the review of alleged wholesaler deficiencies, including the submission in writing to the wholesaler by the brewer of said deficiencies, if the deficiencies are susceptible of correction and if the wholesaler desires to correct said deficiencies, a reasonable period of time shall be given the wholesaler for rectification of said deficiencies prior to any notice of intent to terminate.

(5) A termination clause providing that the brewer shall deliver, in writing, to the wholesaler a sixty (60) day notice of intent to terminate the agreement, contract or franchise.

Section 3. There is a new section to be numbered 4-317.4, R.C.M. 1947, which reads as follows:

**4-317.4. Transfer of interest in business.** A wholesaler shall have the right to sell or transfer his business or an interest in his business to any person, or to one or more members of his family, or heirs or legatees, whether the wholesaler operates as an individual, a partnership, or corporation: Provided, however, the consent of the brewer in writing is required for such transferee to continue as a wholesaler of said brewer, which consent shall consider the personal, financial and managerial responsibilities and capabilities of such transferee and which consent shall not unreasonably be withheld.

Section 4. There is a new section to be numbered 4-317.5, R.C.M. 1947, which reads as follows:

**4-317.5. Contractual or franchise relationship — existence by actions.** The doing or accomplishing of any of the following acts constitutes prima facie evidence of a contractual or franchise relationship within the contemplation of this act, as between a licensed wholesaler and a brewer:

(1) The shipment, the preparation for shipment or acceptance of any order by any brewer or its agent for any beer to a licensed wholesaler within this state.

(2) The payment by any licensed wholesaler within this state or the acceptance of payment by any brewer or its agent for the shipment of an order of beer intended for sale within this state.

Section 5. There is a new section to be numbered 4-317.6, R.C.M. 1947, which reads as follows:

**4-317.6. Injunctive relief — when granted.** Any court of competent jurisdiction may enjoin the cancellation or termination of a franchise or agreement between a wholesaler and a brewer at the instance of a wholesaler who is or would be adversely affected by the cancellation or termination. In granting an injunction, the court shall provide that the brewer shall not supply the customers or territory of the wholesaler who is servicing the territory or customers through other distributors or means while the injunction is in effect.

Section 6. There is a new section to be numbered 4-317.7, R.C.M. 1947, which reads as follows:

**4-317.7. Agreements filed with department of revenue.** An exact copy of all agreements, contracts or franchises between a brewer and a wholesaler shall be filed with the department of revenue as a public document and shall be available to any of the parties to a dispute. The department, upon the instigation of any action in a court of record, shall file an exact certified copy of the agreement with the court for the court's consideration in determining any matter before it. Any contracts, agreements or franchises not upon record with the board shall not be considered by any court as having any force or effect.

Section 7. There is a new section to be numbered 4-317.8, R.C.M. 1947, which reads as follows:

**4-317.8.** All acts and parts of acts in conflict with this act are hereby repealed.

Approved March 28, 1974

## CHAPTER NO. 323

AN ACT EXTENDING THE REGULATION OF CREDIT LIFE INSURANCE AND CREDIT DISABILITY INSURANCE; AND REQUIRING THE AMOUNT OF INSURANCE IN CERTAIN POLICIES TO EQUAL THE AMOUNT OF INDEBTEDNESS; AMENDING SECTIONS 40-4203 AND 40-4206, R.C.M. 1947.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 40-4203, R.C.M. 1947, is amended to read as follows:

**"40-4203. Scope of chapter.** All life insurance and all disability insurance sold in connection with loans or other credit transactions shall be subject to the provisions of this chapter except such insurance sold in connection with a loan or other credit transaction of more than ten (10) years duration."



Section 2. Section 40-4206, R.C.M. 1947, is amended to read as follows:

**"40-4206. Amount of credit life insurance and credit disability insurance.** (1) Credit life insurance: The amount of credit life insurance shall *be equal to the indebtedness, provided that the original indebtedness does not exceed the sum of fifteen thousand dollars (\$15,000). If the original indebtedness exceeds the sum of fifteen thousand dollars (\$15,000), the amount of credit life insurance shall not exceed the indebtedness.* Where indebtedness repayable in substantially equal installments is secured by an individual policy of credit life insurance the amount of insurance shall not exceed the approximate unpaid indebtedness on the date of death and, where secured by a group policy of credit life insurance shall not exceed the exact amount of unpaid indebtedness on such date. Except, that agricultural loans not exceeding one year may be written up to the amount of the loan commitment on a nondecreasing or level term plan.

(2) Credit disability insurance: The amount of periodic indemnity payable by credit disability insurance in the event of disability, as defined in the policy, shall *be equal to the aggregate of the periodic scheduled unpaid installments of indebtedness and shall not exceed the original indebtedness divided by the number of periodic installments, provided that the original indebtedness does not exceed the sum of fifteen thousand dollars (\$15,000). If the original indebtedness exceeds the sum of fifteen thousand dollars (\$15,000), the amount of periodic indemnity payable by credit disability insurance in the event of disability, as defined in the policy, shall not exceed the aggregate of the periodic scheduled unpaid installments of indebtedness and shall not exceed the original indebtedness divided by the number of periodic installments.*"

Approved March 28, 1974

## CHAPTER NO. 324

AN ACT PROVIDING THAT PARENTS OF LONG-TERM RESIDENTS AT INSTITUTIONS ADMINISTERED BY THE DEPARTMENT OF INSTITUTIONS ARE LIABLE ONLY TO THE EXTENT OF THE COST OF CARING FOR A NORMAL CHILD AT HOME AS DETERMINED FROM STANDARD SOURCES BY THE DEPARTMENT OF INSTITUTIONS.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is a new section to be numbered 80-1605, R.C.M. 1947, which reads as follows:

**80-1605. Parental liability for costs incurred by resident of institutions.** (1) The natural or adoptive parents of persons who are long-term residents at facilities owned or operated by the department of institutions

shall only be liable on the charges made by such facility for treatment, care and maintenance for an amount not to exceed the cost of caring for a normal child at home as determined from standard sources by the department.

(2) Parents or adoptive parents of a long-term resident in a facility owned or operated by the department shall not be liable for any charges made by such facility for treatment, care and maintenance of such a resident incurred or accrued subsequent to such resident attaining age eighteen (18).

(3) For purposes of this section the term "long-term resident" is defined as a person who has been a resident in a facility owned or operated by the department for a continuous period in excess of one hundred twenty (120) days. No absence of a resident from the facility due to a temporary or trial visit shall be counted as interrupting the accrual of the one hundred twenty (120) days herein required to attain the status of a long-term resident.

Section 2. There is a new section to be numbered 80-1606, R.C.M. 1947, which reads as follows:

80-1606. **Relief from excess charges.** This act is intended to relieve and shall be construed to relieve any parent of any liability for charges in excess of the limit set in section 1 [80-1605] of this act for treatment, care and maintenance of a natural or adoptive child at facilities owned or operated by the department of institutions.

Approved March 28, 1974

## CHAPTER NO. 325

AN ACT AUTHORIZING SERVICES AND FACILITIES FOR THE DEVELOPMENTALLY DISABLED WITHIN MONTANA; ENABLING COUNTIES TO LEVY A TAX FOR THE AUTHORIZING SERVICES AND FACILITIES FOR THE DEVELOPMENTALLY DISABLED; ESTABLISHING A STATE COUNCIL FOR DEVELOPMENTAL DISABILITIES SERVICES AND FACILITIES; ENABLING COUNTIES TO LEVY A TAX FOR THE SUPPORT OF SERVICES AND FACILITIES FOR THE DEVELOPMENTALLY DISABLED, ESTABLISHING DEVELOPMENTAL DISABILITY REGIONS AND REGIONAL COUNCILS; AND CREATING THE "MONTANA DEVELOPMENTAL DISABILITIES SERVICES AND FACILITIES ACT OF 1974"; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is a new section to be numbered 80-2611, R.C.M. 1947, which reads as follows:

80-2611. **Title.** This act shall be known and may be cited as the "Montana Developmental Disabilities Services and Facilities Act of 1974."

Section 2. There is a new section to be numbered 80-2612, R.C.M. 1947, which reads as follows:

**80-2612. Definitions.** As used in this act:

(1) "Developmental disabilities" means disabilities attributable to mental retardation, cerebral palsy, epilepsy, autism, or any other neurological handicapping conditions closely related to mental retardation and requiring treatment similar to that required by mentally retarded individuals; which condition has continued or can be expected to continue indefinitely and constitutes a substantial handicap of such individuals.

(2) "Developmental disabilities facility" means any service or group of services offering care to the developmentally disabled on an inpatient, outpatient, residential, clinical or other programmatic basis.

(3) "Comprehensive developmental disability center" means a system of services not necessarily encompassed within one building offering any or all of the following sixteen (16) basic services with the intention of providing alternatives to institutionalization:

- (a) evaluation services,
- (b) diagnostic services,
- (c) treatment services,
- (d) day care services,
- (e) training services,
- (f) education services,
- (g) employment services,
- (h) recreation services,
- (i) personal care services,
- (j) domiciliary care services,
- (k) special living arrangements services,
- (l) counseling services,
- (m) information and referral services,
- (n) follow along services,
- (o) protective and other social and socio-legal services,
- (p) transportation services.

Provision of service by a comprehensive center shall be authorized only when a generic service agency declines to provide such service.

Section 3. There is a new section to be numbered 80-2613, R.C.M. 1947, which reads as follows:

**80-2613. Responsibilities of state.** The state of Montana shall:

(1) take cognizance of matters affecting the developmentally disabled citizens of the state;

(2) initiate a preventive developmental disabilities program, which program shall include, but not be limited to, the implementation of developmental disabilities care and treatment, and prevention and research as can best be accomplished by community centered services. Every means shall be utilized to initiate and operate such service programs in cooperation with local agencies, as established under provisions of sections 5 [80-2615] and 7 [80-2617] of this act;

(3) make scientific and medical research investigations relative to the incidence, cause, prevention and care of developmental disabilities;

(4) collect and disseminate information relating to developmental disabilities;

(5) prepare, with the advice of the state council, created in section 6 [80-2616] herein, an annual comprehensive plan for the initiation and maintenance of developmental disabilities services in the state. Such services shall include, but not be limited to, community comprehensive developmental disabilities services as referred to in section 2 [80-2612];

(6) provide by regulation for the evaluation of persons who shall apply for services, or persons who shall be admitted either as inpatients or outpatients into the Boulder river school and hospital, or other developmental disability clinic;

(7) receive from agencies of the government of the United States and other agencies, persons or groups of persons, associations, firms or corporations, grants of money, receipts from fees, gifts, supplies, materials, and contributions to initiate and maintain developmental disabilities services within the state.

Section 4. There is a new section to be numbered 80-2614, R.C.M. 1947, which reads as follows:

**80-2614. Rules and regulations.** The state of Montana shall control developmental disabilities programs which receive any state assistance by establishing and promulgating rules, regulations and standards for providing developmental disabilities facilities and services. It shall set minimum standards for programs, establish appropriate qualifications and compensation scales and personnel policies for persons employed in such programs. All developmental disabilities facilities and services shall comply with existing federal guidelines and with requirements which will enable the services and facilities to qualify for available aid funds. However, nothing herein shall imply the necessity for facilities serving the developmentally disabled to meet the same or equal standards as licensed medical facilities, unless the developmental disabilities facility is providing professional or skilled medical care.

Section 5. There is a new section to be numbered 80-2615, R.C.M. 1947, which reads as follows:

**80-2615. Community services.** (1) The state of Montana may establish and administer community comprehensive services, clinics or other facilities throughout the state for the purpose of aiding in the prevention, diagnosis, amelioration or treatment of developmental disabilities. Such centers, clinics or other services may be provided directly by state agen-

cies, or indirectly through contract or cooperative arrangements with other agencies of government, regional or local, private or public agencies, private professional persons or in accredited health or long-term care facilities.

(2) State funds specifically appropriated for regional developmental disabilities service programs may not exceed fifty percent (50%) of the total expenditures of the programs. Any fees collected under this act shall be deposited to the state's general fund in proportion to the state's contribution.

Section 6. There is a new section to be numbered 80-2616, R.C.M. 1947, which reads as follows:

**80-2616. State council of developmental disability services and facilities created.** For purposes of administration of this act, there is hereby created the Montana state council of developmental disabilities services and facilities, hereinafter referred to as the "state council."

(1) The state council shall be composed of twenty-three (23) members, appointed or reappointed annually by the governor, and shall consist of the following:

(a) one-third ( $\frac{1}{3}$ ) of the members shall be consumers or representatives of consumers or consumer organizations in the disciplines of developmental disabilities;

(b) the director or deputy director of the departments of social and rehabilitation services, health and environmental sciences, institutions, and labor;

(c) the superintendent of public instruction, or a deputy designated by the superintendent of public instruction;

(d) one (1) recognized private professional in each of the disciplines of medicine, law, psychology, social work, and education;

(e) two (2) members of the state Senate;

(f) two (2) members of the state House of Representatives;

(g) the administrator of the division of vocational rehabilitation;

(h) the remaining member shall be appointed from the public at large;

(2) The state council shall meet no less frequently than three (3) times per year, and may meet more frequently at the call of the chair. The state council shall annually choose its own chairman, vice chairman, and secretary.

(a) Members of the state council who are not full-time employees of the state of Montana shall be reimbursed for actual and necessary costs of travel incident to attending meetings and in the authorized performance of their duties.

(b) Such members, who are not full-time employees of the state of Montana, shall be paid an honorarium for each day of official duty in an amount established by the administering state department, but not to exceed any limit established by law.

(3) The state council shall provide advice to state agencies and regional councils in the provision or purchase of services for the developmentally disabled, and in the expenditure of funds granted or appropriated for the benefit of the developmentally disabled.

(4) The state council shall have such other jurisdiction and responsibility as may be assigned by the governor, or as required by federal law or regulation.

(5) The state council may be assigned to a state department by executive order, or in lieu of such order, the state council shall be assigned to the department of social and rehabilitation services.

Section 7. There is a new section to be numbered 80-2617, R.C.M. 1947, which reads as follows:

**80-2617. Developmental regions to be established — structure and organization.** (1) For further purposes of administration of this act, developmental disability regions shall be established within the state, which regions shall conform with the governor's multi-county regions.

(2) Upon establishment of a developmental disability region, a governing board of directors shall be created, with the following composition:

(a) One (1) member shall be appointed by the board of county commissioners of each of the participating counties within the region;

(b) Two (2) members, who shall be residents of the region, shall be appointed by the governor.

(c) Members of a regional board shall be appointed or reappointed annually.

(d) The state council shall promulgate guidelines for the administration of regional boards.

(3) The duties of organized regional developmental disabilities boards shall include:

(a) annual review and evaluation of needs and services within said region; and

(b) submitting to the state council, the appropriate state agencies, and to each of the participating counties within the region, plans and budget proposals to provide and support developmental disabilities services within the region;

(c) establishment of a recommended proportionate level of financial participation by each of the counties involved in the provision of developmental disability services within the limits of this section;

(d) receipt and administration of such moneys and other support as are made available for the purpose of providing developmental disability services by the participating agencies, including grants from the United States government and other agencies, receipt of established fees for services rendered, tax moneys, gifts, donations and other support;

(e) supervision by appropriate administrative staff personnel of the operation of community developmental disability services in the region;

(f) to keep all records of the board and make such reports as may be required.

(4) Regional developmental disability board members, who are not full-time employees of the state of Montana or of a county, shall be reimbursed from funds of the board for actual and necessary expense incurred in attending meetings and in the discharge of other duties when assigned by the board.

(5) The regional board of developmental disabilities shall submit to the board of county commissioners of each of the counties within the constituted developmental disability region an annual budget, which shall specify each county's recommended proportionate share of the regional developmental disabilities' budget.

(a) Upon written agreement between the regional board and a county, the county shall be designated as a participating county.

(b) Counties choosing not to participate may be assessed fees for developmental disability services which are provided to residents of such non-participating counties; provided, however, that no county shall be required to make any such payment involuntarily.

The schedule of fees may be established by the regional board of developmental disabilities, with the approval of the state council. Such fees shall be an obligation of the county and may be received by the regional board to be used to provide approved services.

Section 8. There is a new section to be numbered 80-2618, R.C.M. 1947, which reads as follows:

**80-2618. County funding to be supplied.** Every participating county of the state shall annually budget and appropriate for the establishment, support and operation of public developmental disabilities facilities and services an amount equal to fifty cents (\$.50) per capita of the population of such county as shown by the division of planning and economic development of the state department of intergovernmental relations. The appropriation may be in an amount greater than the minimum herein provided and shall be made under the authority contained in section 9 [80-2619] herein and may be appropriated either out of the general fund of the county or by use of the permissive special mill levy as herein provided.

Section 9. There is a new section to be numbered 80-2619, R.C.M. 1947, which reads as follows:

**80-2619. Counties and municipalities permitted to contribute to facilities outside their jurisdiction.** (1) The boards of county commissioners of the several counties and the governing bodies of municipalities of this state, may, in their discretion, contribute sums of money annually to any developmental disabilities facility approved by the state of Montana, or to each of such facilities, without regard to whether they are within or outside of their respective jurisdictions. The boards of county commissioners of the participating counties may levy a tax up to, but not to exceed, one (1) mill on each dollar of taxable property within the county, which tax levy hereby authorized shall be in addition to all other

county tax levies, all proceeds of which tax, if levied, shall be used for the sole purpose of support of such developmental disabilities facilities.

(2) For the purpose of carrying out the provisions of this section, such boards of county commissioners and such governing bodies of municipalities may appropriate out of the general fund of their respective counties or municipalities.

Section 10. There is a new section to be numbered 80-2620, R.C.M. 1947, which reads as follows:

80-2620. **When counties may reduce funding.** In the event that funds appropriated by the legislature for any fiscal year are not equal to the amount generated by the counties by authority of this act, the counties may reduce their appropriations by an equal amount so that county funds expended for programming purposes under this act shall not exceed state funds.

Section 11. There is a new section to be numbered 80-2621, R.C.M. 1947, which reads as follows:

80-2621. **Eligibility for services.** Any person suspected of a developmental disability shall be eligible for initial intake and for diagnostic and counseling services through any comprehensive developmental disability center, without reference to any other eligibility criteria.

Section 12. There is a new section to be numbered 80-2622, R.C.M. 1947, which reads as follows:

80-2622. **Act applicable to reservation Indians.** For purposes of this act, Indian people living within federal Indian reservations shall be entitled to all services provided for under this act.

Section 13. There is a new section to be numbered 80-2623, R.C.M. 1947, which reads as follows:

80-2623. **No effect on existing facilities.** Nothing in this act shall be construed to prevent the continuation of existing developmental disabilities facilities or services in the state.

Section 14. There is a new section to be numbered 80-2624, R.C.M. 1947, which reads as follows:

80-2624. **Discrimination forbidden.** The services provided under this act shall be made available without discrimination on the basis of race, color, creed or ability to pay and shall comply with the provisions of Title VI of the federal Civil Rights Act of 1964.

Section 15. There is a new section to be numbered 80-2625, R.C.M. 1947, which reads as follows:

80-2625. **Severability.** It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If the part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 16. This act shall be effective on January 1, 1975.

Approved March 28, 1974

## CHAPTER NO. 326

AN ACT FOR THE CODIFICATION AND GENERAL REVISION OF



## THE LAWS RELATING TO THE DEPARTMENT OF ADMINISTRATION.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 6-106, R.C.M. 1947, is amended to read as follows:

**"6-106. All officers and employees to be bonded — determination of amounts of bonds — competitive bids.** All state officers and employees shall be bonded. Before determining the amount for which a state officer or employee shall be bonded, the *department of administration* shall consult with the head of the institution or agency involved and the head of the agency responsible for the examination or postauditing of state agencies. The amount for which a state officer or employee shall be bonded shall be based on the amount of money or property handled and the opportunity for defalcation. All bonds shall be purchased by competitive bid."

Section 2. Section 11-2319, R.C.M. 1947, is amended to read as follows:

**"11-2319. Delivery of bonds — payment for same — use of proceeds.** If the board of *investments* is the purchaser of the bonds, the city or town treasurer shall forward the registered bonds to the *department of administration* who shall *deliver them* to the state treasurer and payment therefor shall be made in the manner provided by law. If the bonds are purchased by other investors the city or town treasurer shall deliver the bonds to the purchaser upon receiving full payment therefor. All moneys arising from the sale of *the* bonds shall be paid to the city or town treasurer and shall be immediately available for the purpose for which the bonds were issued and for no other purpose."

Section 3. Section 16-2031, R.C.M. 1947, is amended to read as follows:

**"16-2031. Notice to the board of investments.** At the same time the notice is sent to the official newspaper of the county for publication the county clerk shall send a copy of *the* notice to the board of *investments* and shall furnish to the *board of investments* a transcript of the proceedings had for the issuance of bonds, and *any* other information relating thereto as the *board of investments* may find necessary."

Section 4. Section 16-2036, R.C.M. 1947, is amended to read as follows:

**"16-2036. Delivery of bonds — payment for same.** If the board of *investments* is the purchaser of the bonds, the county treasurer shall forward the registered bonds to the *department of administration* who shall *deliver them* to the state treasurer and payment therefor shall be made in the manner provided by law. If the bonds are purchased by other investors the county treasurer shall deliver the bonds to the purchaser upon receiving full payment therefor. All moneys arising from the sale of *the* bonds shall be paid to the county treasurer and shall be immediately available for the purpose for which the bonds were issued and for no other purpose."

Section 5. Section 31-201, R.C.M. 1947, is amended to read as follows:

**"31-201. Definitions.** *Unless the context requires otherwise*, in this act:

(1) "Accumulated deductions" *means* the total of the amounts deducted from the salary of a contributor and paid into the fund, and standing to his credit in the fund, together with the regular interest thereon.

(2) "Department" *means* the department of administration provided for in Title 82A, chapter 2.

(3) "Beneficiary" *means* a person or persons having an insurable interest in his life as he shall nominate by written designation, duly acknowledged and filed with the department.

(4) "Retired patrolman" *means* a person in receipt of a retirement allowance under this act.

(5) "Board" *means* the board of administration provided for in section 82A-210.

(6) "Compulsory retirement age" *means* sixty years of age.

(7) "Contributor" *means* a person who has accumulated deductions in the fund, standing to his credit.

(8) "Final salary" *means* the average annual compensation received by a contributor before any deductions have been made, and exclusive of maintenance, allowances and expenses, for any three (3) years of continuous service upon which contributions have been made, or, in the event a member has not served three (3) years, the total retirement compensation earned, divided by the number of years served.

(9) "Actuarial equivalent" *means* the accumulated contributions and the present value of the member's state service based on length of service and member's attained age used to provide a life or temporary life income to the legally designated person, based on the person's attained age and sex at the time the option becomes available.

(10) "Account" *means* the Montana highway patrolmen's retirement account in the agency fund.

(11) "Involuntary retirement" *means* a retirement not for cause and before retirement age.

(12) "Member's annuity" *means* payments for life derived from contributions made by the contributor.

(13) "Optional retirement age" *means* the age at which a contributor may retire after twenty (20) years' service or more.

(14) "Retirement age" *means* the age at which a member retires after twenty-five (25) years of creditable service with the Montana highway patrol.

(15) "Retirement allowance" *means* the state annuity plus the member's annuity.

(16) "State annuity" *means* payments for life derived from contributions made by the state of Montana."

Section 6. Section 31-205, R.C.M. 1947, is amended to read as follows:

**"31-205. Payments into the Montana highway patrolmen's retirement account — investment.** All appropriations made by the state, all contributions by members of the Montana highway patrol, in the amount hereinafter specified, and all interest on and increase of the investments and moneys under this account shall be paid to the state treasurer, who shall credit *the* payments to the Montana highway patrolmen's retirement account in the agency fund. *When* there is on deposit in the Montana highway patrolmen's retirement account a sum in excess of twenty-five thousand dollars (\$25,000), *the* excess will be invested by the board of *investments* as part of the long term investment fund and any of the account less than twenty-five thousand dollars (\$25,000) in amount shall be invested by the board of *investments* as part of the short term investment fund when so directed by the board."

Section 7. Section 31-206, R.C.M. 1947, is amended to read as follows:

**"31-206. Rules — actuarial data.** The board may establish rules it *considers necessary to carry out its functions under this act. The board shall determine* the conditions under which persons may be admitted to and continue to receive benefits under the retirement system. It shall keep such data as shall be necessary for actuarial valuation purposes. It shall cause to be made periodic actuarial investigations into the mortality and service experience of the contributors to and the beneficiaries of the account, and shall adopt for the retirement system one or more mortality tables."

Section 8. Section 31-207, R.C.M. 1947, is amended to read as follows:

**"31-207. Membership.** Every member of the Montana highway patrol, including the supervisor and assistant supervisors, shall be a member of the retirement system. *If a person becomes a member of the Montana highway patrol after July 1, 1945, who was at any time before July 1, 1945, a member of the Montana highway patrol, he shall receive credit for any such service prior to July 1, 1945, upon complying with the provisions of this act.*"

Section 9. Section 31-211, R.C.M. 1947, is amended to read as follows:

**"31-211. Retirement.** A member in service who has completed at least twenty-five (25) years of creditable service may retire on a service retirement allowance upon written application to the *department* setting forth at what time, not less than thirty (30) days nor more than ninety (90) days subsequent to the filing thereof, he desires to be retired."

Section 10. Section 31-222, R.C.M. 1947, is amended to read as follows:

**"31-222. Nomination of beneficiary.** Every contributor *may* name his beneficiary by written designation duly acknowledged and filed with the *department*, and to change the beneficiary in like manner. Such designation and all changes must be filed with the *department*."

Section 11. Section 31-223, R.C.M. 1947, is amended to read as follows:

**"31-223. Service in the armed forces of the United States. A**

member of the Montana highway patrol inducted into the armed forces of the United States, shall have the option: (1) to continue his payments into the fund; or (2) allow the *department* to make his payments for him during *his* military service, in which event he shall repay the fund the full amount of *the* payments upon his return to the Montana highway patrol, and *these* repayments must be made within two (2) years after his return to the patrol, *however*, a member's service in the armed forces of the United States shall be credited to and made a part of the member's service allowance."

Section 12. Section 31-224, R.C.M. 1947, is amended to read as follows:

"31-224. **Fraud — correction of errors.** (1) (a) No person shall knowingly make any false statement, or shall falsify or permit to be falsified any record of the retirement system in *an* attempt to defraud *the* system. (b) Should *a* change in records fraudulently made or *a* mistake in records inadvertently made result in *a* contributor or beneficiary receiving more or less than he would have been entitled to had the records been correct, then, on the discovery of *the* error, the *department* shall correct *the* error and shall adjust the payments which shall be made to the contributor or annuitant in *a* manner that the actuarial equivalent of the benefit to which he was correctly entitled shall be paid.

(2) A person violating any of the provisions of subsection (1) (a) of this section *is* guilty of a misdemeanor, and, upon conviction, shall be *fin*ed not exceeding one thousand dollars (\$1,000) or *imprisoned* not exceeding one (1) year, or both *fin*ed and *imprisoned*."

Section 13. Section 31-228, R.C.M. 1947, is amended to read as follows:

"31-228. **Optional retirement allowance.** Until the first payment on account of any retirement allowance is made and subject to the conditions that, if he die after retirement and within thirty (30) days from the date upon which his election or changed election is received at the office of the *department*, then *the* election is void, and the death shall be considered as that of a member before retirement. A member or a beneficiary may elect, or revoke, or change a previous election prior to the approval of the previous election to receive the actuarial equivalent of his retirement allowance as of the date of retirement, in a lesser retirement allowance, payable throughout life with one of the following options:

(1) Option 1. Upon his death, his lesser retirement allowance shall be continued throughout the life of and paid to *the* person, having an insurable interest in his life, as he nominates by written designation duly executed and filed with the *department* at the time of his retirement.

(2) Option 2. Upon his death, one-half of his lesser retirement allowance shall be continued throughout the life of and paid to *the* person, having an insurable interest in his life, as he nominates by written designation duly executed and filed with the *department* at the time of his retirement.

(3) Option 3. Such other benefit or benefits shall be paid, either to

the beneficiary or to *the* other person or persons as he nominates, as, together with such lesser retirement allowance, are the actuarial equivalent of his retirement allowance, and shall be approved by the board."

Section 14. Section 31-230, R.C.M. 1947, is amended to read as follows:

"31-230. **Dormant savings accounts — transfer — subsequent re-entry to membership.** The *department* may, in its discretion, transfer the savings account of a member to the pension accumulation fund if the account has been dormant for a period of ten (10) years. *However*, no right of the member shall be jeopardized by *the* transfer, and the savings account shall be transferred to the member's name upon subsequent re-entry to membership."

Section 15. Section 37-107, R.C.M. 1947, is amended to read as follows:

"37-107. **Printing and distribution of measures.** (1) The secretary of state shall furnish a copy of each of the proposed measures to be submitted to the people, and make requisition on the *department of administration*, for the printing and delivery to him of all proposed constitutional amendments, initiative, and referendum measures to be submitted to a vote of the people.

(2) The *department of administration*, shall, not later than the first Monday of the second month next before any general or special election, at which any proposed law is to be submitted to the people, *have* printed a true copy of the title and text of each measure to be submitted, with the number and form in which the question will be printed on the official ballot. *The department of administration shall* call for bids and contract with the lowest responsible bidder for the printing of the proposed law to be submitted to the people.

(3) The proposed law to be submitted shall be printed in news type, each page to be six inches wide by nine inches long, and when *the* proposed measure constitutes less than six pages, it shall be printed flat and forwarded to the county clerk and recorder of each *county* in that form.

(4) When the proposed measure constitutes more than six pages, *the* measure shall be printed in pamphlet form, securely stapled, without cover. No proposed measure shall be bound. The quality of the paper to be used for the proposed measure shall be left to the discretion of the *department of administration*. The number of proposed measures to be printed shall be at least five per cent (5%) more than the number of qualified electors, as shown by the registration lists of the several counties of the state at the last preceding general election.

(5) The secretary of state shall distribute to each county clerk, before the second Monday in the second month next preceding the election at which the proposed measure(s) will be voted upon, a sufficient number of pamphlets to furnish one copy to every voter in his county. *Each* county clerk shall mail to *the county* at least one copy of the *pamphlet* within thirty (30) days from the date of his receipt of the *pamphlets* from the secretary of state."

Section 16. Section 68-1401, R.C.M. 1947, is amended to read as follows:

"68-1401. **Definition of terms.** *Unless the context requires otherwise, in this act:*

(1) "Accumulated deductions" *means* the total of the amount deducted from the salary of a contributor and paid into the account, and standing to his credit in the account together with the regular interest thereon.

(2) "Beneficiary" *means* a person or persons having an insurable interest in his life as he shall nominate by written designation, duly acknowledged and filed with the board.

(3) "Retired state game warden" *means* any person in receipt of a retirement allowance under this act.

(4) "Board" *means* the Montana state game wardens' retirement board.

(5) "Contributor" *means* any person who has accumulated deductions in the account, standing to his credit.

(6) "Final salary" *means* the average annual compensation received by a contributor before any deductions have been made, and exclusive of maintenance, allowances, and expenses, for any three (3) years of continuous service upon which contributions have been made, or, in the event a member has not served three (3) years, the total retirement compensation earned, divided by the number of years served.

(7) "Actuarial equivalent" *means* the accumulated contributions and the present value of the member's state service based on length of service and member's attained age used to provide a life or temporary life income to the legally designated person, based on *the* person's attained age and sex at the time the option becomes available.

(8) "Account" *means* the Montana state game wardens' retirement account in the agency fund.

(9) "Involuntary retirement" *means* a retirement not for cause and before retirement age.

(10) "Member's annuity" *means* payments for life derived from contributions made by the contributor.

(11) "Optional retirement age" *means* the age at which a contributor may retire after twenty (20) years service or more; provided that *the* contributor has reached the age of fifty-five (55) years.

(12) "Retirement age" *means* the age at which a member retires after twenty-five (25) years of creditable service as a state game warden of the *department of fish and game*. All members must retire at age sixty (60).

(13) "Retirement allowance" *means* the state annuity plus the member's annuity.

(14) "State annuity" *means* payments for life derived from contributions made by the state of Montana fish and game moneys in the earmarked revenue fund."

Section 17. Section 68-1404, R.C.M. 1947, is renumbered 82A-210.1, and is amended to read as follows:

**"82A-210.1. Montana state game wardens' retirement board.** There is a Montana state game wardens' retirement board. The board *consists of the same* five (5) members who compose the board of administration, *provided for in section 82A-210.*"

Section 18. Section 68-1407, R.C.M. 1947, is amended to read as follows:

**"68-1407. Membership.** Every state game warden, including all warden supervisory personnel, whose salary or compensation for services is paid wholly out of the Montana fish and game moneys in the earmarked revenue fund and who is assigned to law enforcement in the *department* of fish and game, shall become a member of the retirement system when first becoming a state game warden. If *a* person becomes a state game warden *after* July 1, 1963, *who was* at any time *before* July 1, 1963, a state game warden, he shall receive credit for any such service prior to July 1, 1963, upon complying with the provisions of this act. All state game wardens shall be members of the retirement system so long as actively employed in *that* capacity."

Section 19. Section 68-1408, R.C.M. 1947, is amended to read as follows:

**"68-1408. State game wardens' retirement account.** There is a state game wardens' retirement account in the agency fund and all moneys received under the provisions of this act shall be credited to *that* account. A state game warden shall be allowed service credit hereunder for any service *prior to* July 1, 1963, including other Montana state, county, or city service."

Section 20. Section 68-1414, R.C.M. 1947, is amended to read as follows:

**"68-1414. Disability retirement allowance.** *If* the total disability of a contributor *is* permanent in character, regardless of length of service of the contributor, a disability retirement allowance shall be granted the contributor in an amount calculated on the actuarial equivalent of the member's annuity and the state annuity standing to his credit at the time of his disability retirement. *If the* total disability is a direct result of any service to the *department* of fish and game in line of duty, and the contributor has had over ten (10) years of service, *the* state game warden who is totally and permanently disabled shall be retired on total retirement allowance of one-half (½) of his average final salary."

Section 21. Section 75-6201, R.C.M. 1947, is amended to read as follows:

**"75-6201. Definitions.** As used in this Title, unless the context clearly indicates otherwise:

(1) "Retirement system" means the teachers' retirement system of the state of Montana provided for in section 75-6202.

(2) "Retirement board" means the retirement system's governing board provided by section 82A-212.

(3) "Employer" means the state of Montana, trustees of any district, or other agency or subdivision of the state which employs a person who is designated a member of the retirement system.

(4) "Member" means any person who has an individual account in the annuity savings fund; an active member is any person included under the provisions of section 75-6209; an inactive member is any person included under the provisions of section 75-6210.

(5) "Beneficiary" means any person in receipt of a pension, annuity, a retirement allowance, or other benefit as provided by the retirement system.

(6) "Service" means the performance of such instructional duties or related activities as would entitle the person to active membership in the retirement system under the provisions of section 75-6209.

(7) "Prior service" means employment of the same nature as service defined in subsection (6) of this section but rendered before September 1, 1937.

(8) "Creditable service" is that service defined by section 75-6212.

(9) "Regular interest" means interest at four per cent (4%) per annum compounded annually, or at such other rate as may be set by the retirement board in accordance with subsection (2) of section 75-6206.

(10) "Accumulated contributions" means the sum of all the amounts deducted from the compensation of a member or paid by a member and credited to his individual account in the annuity savings fund, together with interest. Regular interest shall be computed and allowed to provide a benefit at the time of retirement.

(11) "Earnable compensation" means the full rate of the compensation, pay or salary that would be payable to a member if he worked the full normal working time. In cases where compensation includes maintenance, the retirement board shall fix the value of that part of the compensation not paid in money.

(12) "Average final compensation" means the average of the earnable compensation of any three (3) consecutive years on which the five per cent (5%) contribution has been made by the member.

(13) "Annuity" means the payments made to a beneficiary for life which are derived from a member's accumulated contributions. All annuities shall be paid in equal monthly installments. The retirement board may make an annual payment to the beneficiaries of the difference between the rate of interest used in calculating the benefit from the annuity reserve fund and the interest earned on investments.

(14) "Pension" means the payments made to a beneficiary for life which are paid into the pension fund derived from money accumulated by employers. All pensions shall be paid in equal monthly installments.

(15) "Retirement allowance" means the annuity plus the pension.



(16) "Annuity reserve" means the present value of all payments to be made on account of a member's annuity and computed upon the basis of such mortality tables as shall be adopted by the retirement board with regular interest.

(17) "Pension reserve" means the present value of all payments to be made on account of a pension and computed on the basis of such mortality tables as shall be adopted by the retirement board with regular interest.

(18) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of such mortality tables as shall be adopted by the retirement board with regular interest.

(19) "Former retirement system" means the retirement system established under sections 1113 to 1132 inclusive, of the Revised Codes of Montana, 1935."

Section 22. Section 75-6202, R.C.M. 1947, is amended to read as follows:

"75-6202. **Retirement system.** The state teachers' retirement system created under the provisions of chapter 87, Laws of 1937 is hereby recognized as the state teachers' retirement system of the state of Montana and no provisions of this act shall affect or impair the validity of any action taken by its governing board or the rights of any person arising under the provisions of chapter 87, Laws of 1937 or any subsequent amendment thereto. Such state teachers' retirement system shall be known as "The Teachers' Retirement System of the State of Montana" and in that name shall transact all business of the retirement system, hold its assets in trust, and have such powers and privileges of a corporation that may be necessary to carry into effect the provisions of this Title."

Section 23. Section 78-1101, R.C.M. 1947, is amended to read as follows:

"78-1101. **Insurance on state buildings — use of proceeds.** (1) Moneys received by the state as indemnification for damage to state buildings, except buildings procured by the *department of highways* by purchase or condemnation for right of way purposes, shall be deposited in the bond proceeds and insurance clearance fund. These moneys may only be:

(a) Used to repair the damaged property, or

(b) Used to replace the damaged property, subject to the limitations in subsection (2) of this section, or

(c) Transferred to the fund and account from which the premiums were paid on the policy covering the building. Moneys transferred in this manner may not be spent by the institution or agency having custody of the damaged property, but shall be available for future legislative appropriation. If the moneys are not spent or committed within two (2) years from the time they are received, they shall automatically revert to the fund and account from which the premiums were paid.

(2) If an insured building is totally destroyed or so badly damaged that

repair is impractical, the governing board or officer responsible for the building may authorize any moneys received by the state as indemnification for property damage to be used to replace the building only if the proposed replacement is designed to be used for the same general purposes as the damaged or destroyed building. If the governing board or officer determines that the building should not be replaced, any moneys received by the state as indemnification for property damage over and above any outstanding debt on the building shall be transferred as provided in subparagraph (c) of subsection (1) of this section."

Section 24. Section 78-1202, R.C.M. 1947, is amended to read as follows:

**"78-1202. Employment of architects and engineers — approval of plans and specifications.** With the approval of the state board of examiners, the *department of administration* shall employ an architect or architects, an engineer or engineers for the period of time the *department* considers proper to make the necessary studies and prepare complete plans and specifications for the purposes set forth in section 78-1201 to proceed with the reconstruction, improvement, remodeling, repair, and furnishing of the state capitol building and to proceed with the construction of the supreme court and law library building. The plans and specifications of the architect or architects, engineer, or engineers shall be approved by a select committee comprised of four (4) members of the house of representatives, not more than two (2) from either political party, appointed by the speaker; and four (4) members of the senate, not more than two (2) from either political party, appointed by the committee on committees."

Section 25. Section 78-1301, R.C.M. 1947, is amended to read as follows:

**"78-1301. Committee created — composition — meetings.** There is hereby created a committee to be composed of seven (7) members: two (2) members of the house of representatives, appointed by the speaker on a bipartisan basis; two (2) members of the senate, appointed by the committee on committees on a bipartisan basis; the *director of administration*; the chairman of the city-county planning board for the city of Helena and county of Lewis and Clark, and the secretary of state. A chairman shall be selected by the members. *Meetings* may be called by the chairman at his discretion."

Section 26. Section 79-305, R.C.M. 1947, is amended to read as follows:

**"79-305. Investment of funds not immediately needed.** The board of *investments* shall invest as part of the long term investment fund or the short term investment fund, depending upon when the principal of such funds may be required, all funds under the direction and control of the *state board of examiners*, not immediately needed by that board."

Section 27. Section 79-413, R.C.M. 1947, is amended to read as follows:

**"79-413. Creation and abolition of new accounts.** Moneys deposited in each fund except the general fund shall be segregated by the *department of administration* by specific accounts based on source, function, or department. When moneys deposited in the state treasury cannot logically

be credited to an existing account, or when it is impractical or undesirable for an agency of state government to segregate moneys in its own accounts, the *department of administration*, in its discretion, may create new accounts consistent with the definitions in section 79-410. *However*, the *department of administration* shall create as few new accounts as practicable. The *department of administration* shall periodically examine all accounts, and shall abolish or consolidate inactive or unnecessary accounts."

Section 28. Section 79-603, R.C.M. 1947, is amended to read as follows:

"79-603. **State agencies may retain certain moneys, when.** The *department of administration* may, in its discretion, permit any state agency to retain in its possession, under conditions the *department of administration* may prescribe, moneys that would otherwise be deposited in the agency fund as defined in the treasury fund structure act. The *department of administration* may cancel *this* permission and require the deposit of the moneys with the state treasurer. *However*, the state treasurer, with the consent of the state depository board, shall designate depositories for the moneys and securities, and require indemnifying bonds or pledged securities sufficient to adequately and properly secure the amounts deposited in the depositories."

Section 29. Section 79-1001, R.C.M. 1947, is amended to read as follows:

"79-1001. **Chapter to be cited, how.** This *chapter* shall be known and may be cited as the "Budget Act."

Section 30. Section 79-1006, R.C.M. 1947, is renumbered 79-1015.1, and is amended to read as follows:

"79-1015.1. **Legislative action.** The presiding officers of the house of representatives and of the senate shall promptly refer the budgets and budget bills to the proper committees. The budget bill for the maintenance of the *agencies* of state government and the state institutions shall be based upon the budget and proposed budget bill so submitted. The legislative assembly may amend the proposed budget bill, *but it may* not amend the proposed budget bill so as to affect either the obligations of the state or the payment of any salaries required to be paid by the constitution and laws of the state."

Section 31. Section 79-1007, R.C.M. 1947, is renumbered 79-1015.2, and is amended to read as follows:

"79-1015.2. **Right of officers to appear on consideration of budget.** The *department of administration* and representatives of the executive officers, *agencies*, and institutions of the state, and other state agencies expending or applying for state moneys, *may*, and when requested by either the house of representatives or the senate, shall appear *and be heard* with respect to any budget bill."

Section 32. Section 79-1011, R.C.M. 1947, is renumbered 79-1015.3, and is amended to read as follows:

**"79-1015.3. Disposal of unexpended appropriations.** All moneys appropriated for any specific purpose shall, after the expiration of the time for which so appropriated, *revert to the several funds and accounts from which originally appropriated. However, any unexpended balance in any specific appropriation may be used for the years for which the appropriation was made.*"

Section 33. Section 79-1101, R.C.M. 1947, is amended to read as follows:

**"79-1101. Prior right to purchase general fund warrants reserved to state.** (1) The state of Montana hereby *reserves to itself a preference right, prior to the right of any person, company, or corporation to purchase state general fund warrants issued with funds under the control of the board of investments and subject to investment.*

(2) *When the board of investments has under its control any funds subject to investment which in its judgment it would be advantageous to have invested in state general fund warrants, and there are not sufficient funds in the state general fund to pay warrants issued against the fund at the time they are issued and presented for payment, it shall authorize and direct the state treasurer to purchase state general fund warrants, designating the fund or funds to be so invested and fixing the amount or amounts. It shall also give notice to the state auditor of the investment to be made by the treasurer, designating the fund or funds to be invested and the amounts. The auditor shall attach to, or stamp, write, or print upon each general fund warrant thereafter issued, until warrants totaling the amounts so designated have been issued, a notice that the state will exercise its preference right to purchase the warrant. The state treasurer shall thereafter when the warrant is presented to him, pay it out of the proper fund as designated by the board and the warrant so purchased shall be registered as other state warrants and bear interest as provided by law.*

(3) *When the designated amounts have been invested, the state treasurer shall notify the board of investments, which shall thereupon issue orders upon the proper funds addressed to the state auditor for warrants to be issued in favor of the treasurer.*"

Section 34. Section 79-1102, R.C.M. 1947, is amended to read as follows:

**"79-1102. Notice to board of investments of bond sales.** All officers in charge of county, city, school district, and irrigation district bond sales shall, at least twenty (20) days *before the date of the sales, furnish to the board of investments a copy of the advertisement of the bond sale, and shall thereafter furnish any further information concerning the sale which may be requested by the board.*"

Section 35. Section 79-1103, R.C.M. 1947, is amended to read as follows:

**"79-1103. Waiver of notice.** *Instead of complying with the provisions of section 79-1102 the officers named in section 79-1102 may, at any time before the date of any bond sale, obtain from the board of investments a written waiver of compliance with the provisions of section 79-1102.*"

Section 36. Section 79-1105, R.C.M. 1947, is amended to read as follows:

"79-1105. Redemption of bonds before maturity. (1) The board of *investments* shall permit any school district, town, city, or county to pay and redeem one or more of its bonds held by the state for the credit of any fund under the investment administration of the board of *investments* at any time before maturity. *In* calculating the unpaid interest accrued on any bond or bonds at the time of payment and redemption, interest for a fractional month shall be calculated and collected for a full month.

(2) Payment and redemption of bonds shall be made at the office of the state treasurer unless the bonds by their own terms and provisions are made payable at some other place and payment at his office would be disadvantageous to the redemptioner. When bonds have been so paid and redeemed, the state treasurer shall effectually cancel the bonds and the attached coupons by perforation or otherwise, and mail to the proper treasurer together with his receipt.

(3) This section *does* not authorize or permit any school district, town, city, or county to issue refunding bonds for the purpose of paying and redeeming any bond or bonds held by the state before the optional or redeemable date therein stated, nor to grant the right to pay any bond or bonds held by the state before the optional or redeemable date from the proceeds of refunding bonds."

Section 37. Section 79-2409, R.C.M. 1947, is amended to read as follows:

"79-2409. **Definitions.** *Unless the context requires otherwise, in this chapter:*

(1) "Administrative costs" means the amounts expended by those state agencies which costs are attributable to the operations of all state agencies and a proration of any cost to, or expense of, the state for services of facilities provided for those state agencies which costs are attributable to the operations of all state agencies, for supervision or administration of the state government, or for services to the various state agencies.

(2) "*Department*" means the department of administration provided for in Title 82A, chapter 2."

Section 38. Section 79-2410, R.C.M. 1947, is amended to read as follows:

"79-2410. **Determination of administrative cost — charge against agency's fund.** The *department* shall determine, and may at any time redetermine, which funds shall be charged a share of administrative costs as to the function supported by any such fund, and the amount which shall be charged against any fund as its fair share of administrative costs. These costs shall be a charge against any fund designated by the *department*."

Section 39. Section 79-2411, R.C.M. 1947, is amended to read as follows:

**"79-2411. Factors in determining share of administrative cost — tax proceeds — highway purposes — constitutional restriction.** In determining or redetermining the fair share, the *department* may consider such factors of cost distribution and cost estimation as it *considers* necessary. However, that as to the proceeds of those taxes, the use of which is restricted by the Montana constitution, the *department* shall assess only those administrative costs ascertained as being necessarily incurred in connection with highway purposes as set forth in the constitution."

Section 40. Section 79-2412, R.C.M. 1947, is amended to read as follows:

**"79-2412. Certification—statement—administrative cost due—deferment—transfer of funds.** The *department* shall determine annually the fair share of administrative costs due and payable from each which administrative costs have been determined or redetermined to be due, a statement in writing setting forth the amount of the administrative costs due from the state agency, and stating that, unless a written request to defer payment is filed by the state agency with the *department* within thirty (30) days after the mailing of the statement by the *department* to the state agency, the *department* will direct the state treasurer to transfer the amount of the administrative costs from the special fund or funds chargeable therewith to the state general fund. The *department* shall specify on the statement the special fund appropriations to be charged at the time transfers are made covering the administrative costs."

Section 41. Section 79-2413, R.C.M. 1947, is amended to read as follows:

**"79-2413. Funds unavailable — unable to pay — written request for deferment — requirements.** If, upon receipt of the statement provided in section 79-2412, the state agency does not have funds available by law for the payment of the administrative costs, or if any transfer might, if effected, result in loss to the state or to any special fund affected, of any federal funds, or would be in violation of the constitution or any law of the United States, or if it has any other reason why the payment of the costs should not be made at the time specified on the statement, the state agency shall, prior to the expiration of the thirty (30) day period referred to in the statement, file with the *department*, a written request to defer payment of the administrative costs. The request shall set forth the reasons why the payment should be deferred. Upon receipt of a request, the *department* shall *approve or disapprove* the transfer of funds."

Section 42. Section 79-2414, R.C.M. 1947, is amended to read as follows:

**"79-2414. Certification — advance payment — deferment — funds unavailable — transfer.** The *department* may determine at any time during the year the amount, based upon experience of the preceding year, to be a reasonable advance for administrative costs to be made from the appropriation of each state agency supported from a fund, designated in accordance with section 79-2410. The *department* shall transmit to each state agency a statement in writing setting forth the amount of the

advance, and stating that unless a written request to defer payment because of lack of availability of funds is filed by the state agency with the *department* within thirty (30) days after the mailing of the statement to the state agency, the *department* will transfer the amount of the advance from the special fund, or funds concerned, to the state general fund. The *department* shall specify on the statement the special fund appropriation to be charged."

Section 43. Section 79-2415, R.C.M. 1947, is amended to read as follows:

**"79-2415. Deferred advance payment — written request — advance applied against share of administrative cost — excess amount refunded.** If, upon receipt of the statement provided in section 79-2414, the state agency does not have funds available by law for the payment of the advance, the state agency shall, prior to the expiration of the thirty (30) day period referred to in the statement, file with the *department* a written request to defer payment of the advance. Upon receipt of a request, the *department* shall *approve or disapprove* the transfer of funds covering the advance referred to in the request. Any advance shall be applied against the state agency's fair share of administrative costs determined or redetermined as provided in sections 79-2412 and 79-2413. If the amount advanced exceeds the state agency's fair share of administrative costs, the *department* shall transfer from the state general fund to the special fund appropriation the excess amount advanced."

Section 44. There is a new section to be numbered 82-108.1, R.C.M. 1947, which reads as follows:

**82-108.1. Definition.** Unless the context requires otherwise, in this chapter "department" means the department of administration provided for in Title 82A, chapter 2.

Section 45. Section 82-109, R.C.M. 1947, is amended to read as follows:

**"82-109. Duties of department — expenditure control.** (1) The *department* shall establish a system of financial control so that the functioning of the various *agencies* of the state may be improved, duplications of work by different state *agencies* and employees eliminated, public service improved, and the cost of government reduced.

(2) *The department shall* apply expenditures against nongeneral fund moneys wherever possible before using the general fund appropriations.

(3) The *department* may, when authorized by the governor, require a quarterly allotment system of expenditure for any office, institution, or agency. The amount of the respective appropriation made by the legislative assembly shall then, except with respect to items of capital outlay and repairs and replacement, be made available to *the* office, institution, or agency in quarterly allotments. *However*, the quarterly allotment shall be based on the requirements of that office, institution, or agency during that quarter based on previous experience of that office, institution, and agency, and not on a prorata quarterly basis.

(4) *The department* may establish procedures necessary to ensure that

expenditures are made and accounted for in accordance with the budget plan authorized by the legislative assembly in the enactment of the appropriations, including, but not limited to, procedures to accrue expenses incurred in one fiscal period and paid in a subsequent fiscal period, and procedures for the issuance of purchase orders or contracts to be paid from succeeding year appropriations that will become available within three (3) months from the date of the issuance of the purchase order or contract."

Section 46. Section 82-109.1, R.C.M. 1947, is amended to read as follows:

**"82-109.1. Authorizations for disbursements — submission to department.** All authorizations for *disbursements*, shall be given by the *agency* concerned, and a record shall be kept by the *agency* of all the authorizations and expenditures. Claims for any *disbursement* must be submitted to the *department* and must bear the signature of the authorizing officer or employee."

Section 47. Section 82-109.2, R.C.M. 1947, is amended to read as follows:

**"82-109.2. Pre-audit of liquidated or settled claims — transmittal of unliquidated claims.** (1) The *department* may pre-audit a *liquidated claim* against the state, and *ascertain* that (1) the proper authorizing signature is present, (2) the claim and supporting documents are mathematically and clerically accurate, (3) the proper appropriation and fund is charged, and (4) the expenditure is *legal*. The *department* may not make any charge against any appropriation unless the balance of the appropriation is available and adequate. If no appropriation is available for the payment of a liquidated claim, the *department* shall audit it and, if it is a valid claim, transmit it to the governor for presentation to the legislative assembly.

(2) An unliquidated *claim* submitted to the *department* shall be transmitted to the state board of examiners to be processed as provided by law."

Section 48. Section 82-109.3, R.C.M. 1947, is amended to read as follows:

**"82-109.3. Form of claims — disapproval by department.** The *department* may prescribe the claim form and may establish in writing, rules governing the preparation, submittal, and processing of claims. All claims shall be processed in the order of their presentation, and all claims disapproved by the *department* shall be returned to the operating agency with an explanation in writing of why the claim was disapproved."

Section 49. Section 82-109.4, R.C.M. 1947, is amended to read as follows:

**"82-109.4. Salary schedules maintained by department.** The *department* shall maintain a schedule of all salaries paid to personnel of civil executive state offices and shall only approve payroll claims agreeing with that schedule. All changes in personnel or salary status shall be authorized as provided by law, and the *department* shall alter the schedule accordingly when notified by the authorizing agency. However, no changes



in personnel or salary status *may* be authorized that will cause *an agency* to exceed its appropriation or that will result in a deficiency or supplemental appropriation request to the legislative assembly."

Section 50. Section 82-110, R.C.M. 1947, is amended to read as follows:

**"82-110. Department to prescribe uniform accounting system.**

(1) The *department* shall prescribe and install uniform accounting and reporting for *all* state *agencies* and institutions, showing the receipt, use, and disposition of all public money and property, and shall develop plans for improvements and economies in the organization and operation thereof, which shall be submitted to the respective heads of *agencies* and institutions. Copies of all such plans shall be delivered to the governor and additional copies shall be retained in the office of the *department* for inspection by the members of the legislative assembly.

(2) The *department* shall examine all financial affairs of every state *agency* and institution for the purpose of developing plans for improvements and economies in the organization and operation thereof, and for the purpose of enabling *the department* to properly perform any of the duties imposed upon *the department* by this *chapter*.

(3) The *department* may establish procedures for canceling and writing off accounts receivable carried on the books of various state agencies which are uncollectible or the continued pursuance of the collection would cost the state more than the amount collected. Such procedures shall include the reporting of *any* canceling and writing off of accounts receivable to the next session of the legislative assembly.

(4) When not specifically provided by law, the *department* may establish a minimum amount which shall be paid on a refund due from the various agencies of the state, and no refund amounting to less than the established minimum shall be paid except upon the specific written request of the person entitled to receive the refund.

(5) Notwithstanding any other provision of state law, when it is determined to be in the best financial interest of the state, the *department* *may* require any moneys received or collected by any agency of the state to be immediately deposited to the credit of the state treasurer.

(6) All officers, employees, and other persons connected with the fiscal affairs of any state office, *agency*, or institution must afford all reasonable facilities for the examination of accounts and investigations provided for in this *chapter* and must make reports, returns, and exhibits relating to such fiscal matters to the *department* in a form *that the department* shall prescribe. *The department* shall keep in *its* office the names of and amount of salary paid to each person regularly employed by the state and every agency.

(7) If *an* officer or employee of the state or any agency *refuses* or *neglects* to comply with subdivision (6) of this section, the salary of *that* officer or employee shall, on request of the *department* to the proper official, be withheld until *that* officer or employee *complies with subdivision (6)*, and the *department* certifies approval to the disbursing officer."

Section 51. Section 82-111, R.C.M. 1947, is amended to read as follows:

**"82-111. Assistance of department to legislative assembly — reports of department.** *The department shall make all reports and submit all information and data the legislative assembly requests, and, when requested, attend all meetings of the appropriations committee of the house of representatives and of the finance and claims committee of the senate. The department shall, during the consideration of appropriation measures by the house and senate, devote so much of its time as may be required by the above-named committees, under the direction of the respective chairmen of the committees.*"

Section 52. Section 82-112, R.C.M. 1947, is amended to read as follows:

**"82-112. When a budget of contemplated expenditures required by federal agency as a condition of federal aid — department to first submit budget to governor.** *When an agency of the federal government requires as a condition to obtaining federal aid that the state agency entrusted with the administration of the aid submit a budget of the contemplated expenditures for administrative purposes, the proposed budget for the expenditures shall, before it is submitted to the federal authorities for approval, first be submitted by the state agency to the department. The department shall then transmit the budget to the governor who shall approve, modify or alter it, and the governor shall submit the budget as approved by him to the legislative assembly. When the legislative assembly is not in session and additional and unanticipated federal aid becomes available, requiring an amended or supplemental appropriation request, then an agency or institution receiving the federal aid shall submit an amended or supplemental administrative appropriation request through the department to the governor for his approval before submission to the appropriate federal agency.*"

Section 53. Section 82-1105, R.C.M. 1947, is amended to read as follows:

**"82-1105. Records.** *The department of administration must keep a record of all the board's proceedings, and any member may have his dissent to the action of the majority, upon any matter, entered upon the record.*"

Section 54. Section 82-1131.1, R.C.M. 1947, is amended to read as follows:

**"82-1131.1. Repeal clause.** *Section 82-1131 does not apply to work done by inmates at an institution in the department of institutions.*"

Section 55. Section 82-1136, R.C.M. 1947, is amended to read as follows:

**"82-1136. State purchasing not affected.** *Nothing contained in section 82-1131 through 82-1135 alters, modifies, or changes the laws providing for or relating to department of administration functions relating to state purchasing.*"

Section 56. Section 82-1139, R.C.M. 1947, is amended to read as follows:

"82-1139. **The bond.** Each bid must be accompanied by a bond, with two or more sureties, in a sum not less than twice the amount of the value of the articles to be supplied, payable to the state, conditioned that if the bidder receives the contract he will deliver the supplies for which he has contracted, under such rules as the *department of administration* may prescribe, and for the faithful performance of the contract."

Section 57. There is a new section to be numbered 82-1901.1, R.C.M. 1947, which reads as follows:

82-1901.1. **Definition.** Unless the context requires otherwise, in this chapter "department" means the department of administration provided for in Title 82A, chapter 2.

Section 58. Section 82-1902, R.C.M. 1947, is amended to read as follows:

"82-1902. **Duties of department.** The *department* shall purchase, or direct and supervise the purchase and sale of all supplies of whatever nature necessary for the proper transaction of the business of every state *agency*, institution, or official."

Section 59. Section 82-1903, R.C.M. 1947, is amended to read as follows:

"82-1903. **Maintenance of warehouses.** The *department* may maintain, rent, lease, or construct *warehouses*."

Section 60. Section 82-1904, R.C.M. 1947, is amended to read as follows:

"82-1904. **Authority to purchase.** An estimate or requisition presented by *an agency* or state official in control of the appropriation or fund against which such contract or purchase is to be charged, must be approved by the *department*, and this shall be full authority for any contract and any purchase made by the department."

Section 61. Section 82-1905, R.C.M. 1947, is amended to read as follows:

"82-1905. **Payment for purchases by department.** All valid claims on account of such contract and purchases negotiated by the *department* shall be audited and paid from the sums severally set aside for the use of the department by the contract and purchase estimate or requisition."

Section 62. Section 82-1906, R.C.M. 1947, is amended to read as follows:

"82-1906. **Contracts for printing and supplies.** The *department* has exclusive power to contract for all printing and to purchase, sell, or otherwise dispose of, or to authorize, regulate, and control the purchase, sale, or other disposition of, all materials and supplies, service, equipment, and other physical property of every kind, required by a state institution or *agency*. *It shall* purchase or cause to be purchased all needed commissary

supplies, and all raw material and tools necessary for any manufacturing carried on at any of *the* institutions; sell all manufactured articles, and collect the money, and generally regulate and control all purchases by any *state agency*, or institution. *It shall* also furnish, repair, and maintain the executive residence for the governor. The *department* shall remit to the state treasurer all moneys received from the sale of property belonging to the state, *and these moneys shall* be credited to the general fund by *the treasurer*."

Section 63. Section 82-1908, R.C.M. 1947, is amended to read as follows:

"82-1908. **Department may require tests.** The *department* may require any *agency* or any of the educational institutions of the state to perform any tests required by the department for information in determining the character and quality of the articles and commodities to be purchased and used by the state."

Section 64. Section 82-1909, R.C.M. 1947, is amended to read as follows:

"82-1909. **Furnishing of stationery, etc.** All stationery, printing, paper, fuel, and lights used in the legislative and other *agencies* of government, and the printing, binding, and distribution of the laws, journals, and department reports and other printing and binding, and repairing and furnishing the halls and rooms used for the meeting of the legislative assembly and its committees, shall be procured by the *department* as provided in *this chapter*."

Section 65. Section 82-1910, R.C.M. 1947, is renumbered 82-1916.1, and is amended to read as follows:

"82-1916.1. **Supervision of public printing.** The *department* may not approve a claim for printing submitted by a state officer, agency, or institution unless:

(1) A purchase order has been prepared and approved by the *department* prior to ordering the printing; or

(2) *Written* approval has been given by the *department* to order the printing without preparation of a purchase order."

Section 66. Section 82-1911, R.C.M. 1947, is amended to read as follows:

"82-1911. **Property returns.** All persons in charge of any state property, must, upon request of the *department*, furnish a sworn statement of all personal property in his possession or under his charge belonging to the state, together with an estimate of *its* value, and must furnish *any* other information in connection therewith, as the *department requires*."

Section 67. Section 82-1913, R.C.M. 1947, is amended to read as follows:

"82-1913. **Advertising for bids required — low bidder to receive contract.** The *department* in making purchase of supplies and equipment under *this chapter*, or under the laws of the state must advertise as here-

inafter provided, and award contracts in the name of the state for such supplies and equipment to the lowest responsible bidder, except as provided *in this chapter*."

Section 68. Section 82-1914, R.C.M. 1947, is amended to read as follows:

"82-1914. **Sale of state property.** (1) The *department* has exclusive power, subject to the approval of the governor, to sell, or otherwise dispose of, or to authorize the sale or other disposition of, all materials and supplies, service, equipment, or other personal property of every kind now owned by the state of Montana, but not needed or used by any state institution or by any department of state government. *However, if a state institution or agency needs and requests the materials, etc., to be disposed of, that institution or agency, upon the approval of the governor, may receive the materials, etc. requested.*

(2) All sales of highway equipment shall be by public auction or sealed bids and all proceeds received by the *department* from the sale of all material, supplies, equipment and all other personal property of the *department of highways* shall be placed in the *highway account of the earmarked revenue fund*."

Section 69. Section 82-1915, R.C.M. 1947, is amended to read as follows:

"82-1915. **Contracts for supplies of state agencies.** (1) Unless otherwise provided by law, the *department* has exclusive power, subject to the approval of the governor, to *contract* with the lowest bidders, for the furnishing of all supplies, stationery, paper, fuel, water, lights, and other articles required by the legislative assembly and all other *state agencies* and institutions.

(2) Before any contract is let, the *department* must advertise in such manner and for such time as provided *in this chapter* for sealed proposals for all *the* supplies or services mentioned in this section."

Section 70. There is a new section to be numbered 82-1915.1, R.C.M. 1947, which reads as follows:

82-1915.1. **Data processing equipment, etc.** The department shall adopt rules governing the procurement and utilization of data processing equipment, programs and data processing communication networks, duplicating and copying equipment, and equipment generally prescribed for automatic typing. The department shall supervise the procurement and location of this equipment, for all state agencies.

Section 71. Section 82-1916, R.C.M. 1947, is amended to read as follows:

"82-1916. **Printing and publications.** (1) The *department* has exclusive power, subject to the approval of the governor, to contract for all printing for any purpose used by the state in any state office, elective or appointive, *agency*, or institution except the printing of the decisions of the supreme court as provided in section 82-2004. *The department* shall supervise and attend to all public printing of the state *as provided in this*

*chapter*, and shall prevent duplication and unnecessary printing. All forms, blanks, and documents printed for distribution to the *state agencies* and institutions shall be serially numbered and indexed by the *department* and sample copies of each permanently retained; and the *department* shall from time to time furnish to the public general information as to the nature, description, and official numbers of such reports as are available for public distribution.

(2) Unless otherwise provided by law, the *department*, in letting contracts as provided in this *chapter*, for the printing, binding, and publishing of all laws, journals, and reports of the *state agencies* and institutions may determine the quantity, quality, style, and grade of all such printing, binding, and publishing."

Section 72. Section 82-1917, R.C.M. 1947, is amended to read as follows:

"82-1917. **Requisitions for supplies — manner of letting contracts.** (1) State officers, *agencies* and institutions shall tabulate in detail the amount of supplies on hand for any class of merchandise for a period as determined by the *department*, and the additional supplies needed for a period of time not to exceed one year's supply. The *department* shall make examination of the amount of supplies on hand and shall determine from *that* examination and from the *furnished* statements, the additional amount of supplies necessary and shall make an itemized statement thereof, all of which acts of the *department* are subject to approval of the governor. As soon as the *department determines* what kind of supplies and the amount necessary for the state to purchase for its state offices, *agencies*, or institutions, *the department* shall make *the* purchases.

(2) All purchases by the *department* shall be based on competitive bids. On any purchase where the estimated expenditure is two thousand dollars (\$2,000) or over, sealed bids shall be solicited by mail from each person, firm, or corporation who has filed with the *department* a request in writing that it be listed for solicitation on bids for such particular items set forth in such listing. *However*, if a person, firm, or corporation whose name is listed *fails* to respond to any solicitation for bids, after the receipt of two such solicitations, such listing shall, within the discretion of the *department*, be canceled. *It is* within the discretion of the *department* to advertise for such purchases. If bids are solicited through advertising, *the* advertisement shall be made in at least three newspapers, one of which must be a daily, of general circulation printed within the state, once each week for two (2) consecutive weeks, and *the* advertisement shall state that sealed proposals will be received by the department, up to a time to be mentioned therein, for furnishing supplies for *the* state offices, *agenoies*, or institutions. *The* notice shall also state that detailed statements of supplies to be furnished are on file at the office of the department and subject to inspection, and that at a certain time, to be therein mentioned, *the* proposals will be opened, and contracts awarded to the lowest responsible bidder.

(3) On purchases where the estimated expenditure is less than two thousand dollars (\$2,000), bids shall be secured without advertising, but the *department* shall solicit bids for *the* supplies by notice sent by mail

to prospective suppliers whose names are listed as provided *above*, which notice shall contain the same information as is herein required to be set forth in advertisements.

(4) In the case of all bids as herein provided, there shall be separate proposals and separate contracts. Each proposal may be accompanied by sample supplies proposed to be furnished. The proposals shall be in writing, sealed, and marked, "proposals for furnishing supplies," and shall be addressed to the *department of administration*, Helena, Montana.

(5) At the time set for the opening of bids, *the* proposals shall be opened in public, and contracts awarded to the lowest responsible bidder. The department *may* reject any and all bids. If all proposals be rejected, proposals shall again be invited and proceeded with in the same manner; however, in *that* event, the *department* may, with the approval of the governor, purchase *the* supplies on the open market if they can be so purchased at a better price.

(6) With any proposal the *department* may require a certified check on some responsible bank, payable to the treasurer of the state, equal in amount to five per cent (5%) of the sum of *the* proposal, as a guarantee for the faithful performance of any contract awarded. After the award is made, all checks deposited as a guarantee shall be returned, except that of the successful bidder whose check shall be held until *the* contract is signed and *the* bond filed and approved, if *a* bond is required. All proposals shall include the delivery of the supplies to the *agencies* and institutions for which they are purchased.

(7) The state officers, *agencies*, or institutions, *may* not purchase any supplies or material, except on approval of the *department*."

Section 73. Section 82-1918, R.C.M. 1947, is amended to read as follows:

"82-1918. **Contracts limited to three years.** (1) No *contract*, except those provided for in subsection (2) of this section, shall be made for a longer period than three (3) years and *a* contract shall provide for the delivery of *the* articles at *the* times and in *the* quantities the *department* determines.

(2) The *department* subject to the approval of the legislature as part of the long-range building program and subject to nonbinding, public bids if more than one (1) person or company is prepared to enter into such contract may enter into rental contracts for buildings required by the state which provide an option to purchase if the best interest of the state is served by the contract. The contract may provide an option-to-purchase provision subject to the limitation that such option must be exercised within twenty (20) years from the date the contract is executed.

(3) All buildings built or leased or purchased under this act must comply with all laws, safety codes, rules and regulations of the state of Montana."

Section 74. Section 82-1919, R.C.M. 1947, is amended to read as follows:

**"82-1919. Purchase of fresh fruits and vegetables — emergency purchases.** (1) Fresh fruits and vegetables (other than potatoes) shall not be included in the supplies to be purchased as provided *in this chapter*. The *department* may allow a state *agency* or institution to purchase fresh fruits and vegetables. An itemized account *shall* be kept of *these* purchases and *the account shall* be furnished to the department.

(2) Likewise, when immediate delivery of articles or performance of service is required by the public exigencies, the articles or service so required may be procured by open purchase or contract at the place and in the manner in which *the* articles are usually bought and sold or *the* services engaged between individuals, but under the direction of the *department*."

Section 75. Section 82-1920, R.C.M. 1947, is amended to read as follows:

**"82-1920. Impartiality to be shown in letting contracts — preference to residents.** The *department* may not show any partiality or favoritism in making awards or contracts, *and* shall be absolutely fair and impartial. *Where* both the bids and quality of goods offered are the same, preference shall be given to articles of local and domestic production and manufacture, and where both the bids and the quality of goods offered are the same, preference shall be given to resident bidders of the state over nonresident bidders."

Section 76. Section 82-1921, R.C.M. 1947, is amended to read as follows:

**"82-1921. Record of bids — contracts.** The department shall *record* in a book kept for that purpose, a true abstract of all bids made for furnishing supplies and equipment for the state, giving the name of the party bidding, the terms of the offer, the sum to be paid, and shall keep on file and preserve all bids until the end of the contract term to which they relate. Each bidder *has* the right to be present, either in person or by agent, when the bids are opened and *has* the right to examine and inspect all bids. All purchases, advertisements, and contracts for supplies for any purpose authorized by law shall be made by the department in the name of the state. The records shall be open at all times for the inspection of those who *are* interested in *the* contracts made or to be made with the state."

Section 77. Section 82-1922, R.C.M. 1947, is amended to read as follows:

**"82-1922. Transfer of contract forbidden — agreement between bidders invalidates contracts — interest in contracts by state officers forbidden — penalty.** (1) No contract or order or any interest therein *may* be transferred by the party to whom *the* contract or order is given to any other party, and *the state may declare void* any such transfer. Collusion or secret agreements between bidders for the purpose of securing any advantage to the bidders as against the state in the awarding of contracts is prohibited, and *the state may declare the contract void if the department finds* sufficient evidence after a contract has been let that *the contract was obtained by a bidder or bidders, by reason of collusive or secret agreement among the bidders to the disadvantage of the state.*



(2) All rights of action, however, for a breach of a contract by the contracting parties are reserved to the state. A person who violates the provisions of this act is guilty of a misdemeanor and shall be fined not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000) and the state of Montana shall have the right at its option to declare any contract in violation of the provisions of this act void ab initio."

Section 78. Section 82-1923, R.C.M. 1947, is amended to read as follows:

"82-1923. **Inspection of property and warehouses of state.** The warehouses, supplies, furnishings, and property of all kinds used in and about the business of the state is subject at all times to the inspection of the department and any officer or employee of any agency."

Section 79. Section 82-2002, R.C.M. 1947, is amended to read as follows:

"82-2002. **Duties of reporters.** The reporters of the decisions of the supreme court shall make careful and accurate reports of the cases decided by the supreme court. The reports of the cases shall be made under the supervision of, and pursuant to rules adopted by the justices of the supreme court. Reports of all cases shall be furnished to the West Publishing Company for inclusion in their publication, the Pacific Reporter, and to any other private printing or duplicating concern requesting the reports for publication. The department of administration, on request of the supreme court, shall contract with a publishing house to publish volumes of reports. The style, size, and format of the reports shall be determined by the justices, and the department of administration shall prepare and issue a call for bids and in accordance with the terms and specifications of the call, contract with the lowest and best bidder."

Section 80. Section 82-3306, R.C.M. 1947, is amended to read as follows:

"82-3306. **Supervision of mailing, data processing, duplicating, copying, and automatic typing facilities.** (1) The department of administration shall maintain and supervise any central mailing, messenger service, data processing, duplicating, and copying facilities for state agencies in the capitol area. Cost records shall be maintained and agencies shall be billed for services received."

Section 81. Section 82-3314, R.C.M. 1947, is amended to read as follows:

"82-3314. **Definitions of building and construction.** In sections 82-3315 to 82-3321, with the exception of 82-3317(2),

(1) "Building" includes:

(a) A building, facility, or structure constructed or purchased wholly or in part with state moneys.

(b) A building, facility, or structure at a state institution.

(c) A building, facility, or structure owned or to be owned by a state agency, including the department of highways.

(2) "Building" does not include:

(a) A building, facility, or structure owned or to be owned by a county, city, town, school district, or special improvement district.

(b) A facility or structure used as a component part of a highway or water conservation project.

(3) "Construction" includes construction, repair, alteration, and equipping and furnishing during construction, repair, or alteration."

Section 82. Section 82-3315, R.C.M. 1947, is amended to read as follows:

"82-3315. **Preparation of building programs and submittal to the legislative assembly.** (1) Before July 1 of each even numbered year, each *state* agency and institution shall submit to the *department of administration*, on forms furnished by the *department*, a proposed long range building program, if any, for the agency or institution. Each agency and institution shall furnish any additional information requested *by the department* relating to the utilization of, or need for buildings.

(2) The *department* shall examine the information furnished by each agency and institution and shall gather whatever additional information is necessary, and conduct whatever surveys are necessary, in order to provide a factual basis for determining the need for, and the feasibility of the construction of buildings. The information compiled by the *department* shall be submitted to the governor before December 1 of each even-numbered year.

(3) During the first week of each regular legislative session, the governor shall submit to the legislative assembly:

(a) The requests of all state agencies and institutions compiled in the form of a comprehensive, long range proposed building program, including:

(i) The purpose for which each building would be used.

(ii) The estimated cost of each building, including necessary land acquisition.

(iii) The reasons given by the institution or agency for needing each building.

(iv) A priority order recommended by the agency or institution for each building.

(v) The recommendation of the institution or agency as to when each building is needed.

(vi) Any comments of the governor.

(b) A building program proposed by the governor for the forthcoming biennium in the form of a capital construction budget, including:

(i) The purpose for which each building would be used.

(ii) The estimated cost of each building and necessary land acquisition.

(iii) The reasons for the governor's recommendation to construct each building during the forthcoming biennium.

(iv) The proposed method of financing for each building.

(v) Any long-range building plans.

(vi) Any changes in the law necessary to insure an effective, well-coordinated building program for the state."

Section 83. Section 82-3316, R.C.M. 1947, is amended to read as follows:

"82-3316. **Authority to construct buildings.** (1) Except as provided in subsection (2) of this section, a building costing more than twenty-five thousand dollars (\$25,000) may not be constructed without the consent of the legislative assembly. When a building costing more than twenty-five thousand dollars (\$25,000) is to be financed in such a manner as not to require legislative appropriation of moneys, such consent may be in the form of a joint resolution.

(2) (a) The governor may authorize the emergency repair or alteration of a building.

(b) The regents of the Montana university system may authorize the construction of revenue-producing facilities referred to in section 75-8503, if they are to be financed wholly from the revenues therein described.

(c) The regents of the Montana university system, with the consent of the governor, may authorize the construction of a building that is financed wholly with federal or private moneys, if the construction of *the* building will not result in any new programs."

Section 84. Section 82-3318, R.C.M. 1947, is amended to read as follows:

"82-3318. **General powers and duties of department of administration.** In carrying out powers relating to the construction of buildings the *department of administration* may:

(1) Inspect buildings not under construction.

(2) Contract with the federal government for advance planning funds.

(3) Purchase, lease, and acquire by exchange or otherwise, land and buildings in Lewis and Clark county and equipment and furnishings for such buildings.

(4) Issue and sell bonds and other securities.

(5) Maintain an inventory of all buildings.

(6) Appoint a project representative to supervise architects' and consulting engineers' inspection of construction of buildings to assure that all construction is in accordance with the contracts, plans, and specifications. The cost of supervision may be charged against moneys available for construction."

Section 85. Section 82-3321, R.C.M. 1947, is amended to read as follows:

"82-3321. **Pecuniary interest in construction of buildings prohibited.** Neither the *director of administration* nor any employee of the department of administration shall have a direct or indirect pecuniary interest in any contract, transaction, or project involving the construction of a building."

Section 86. Section 82-3325, R.C.M. 1947, is amended to read as follows:

**"82-3325. Powers and duties of department of administration regarding communications.** The *department of administration* shall:

(1) *Provide* communication services to all agencies of state government. The state communications system shall be capable of passing voice, video, data, written information, and other forms of communication to and from distant points. The *department* shall *adopt* adequate rules for the use of any communications equipment and facilities now in use or hereafter made available;

(2) *Exercise* general supervision over all existing communications systems for all agencies of state government;

(3) *Plan*, review, and approve any additional installations of communications equipment and systems for all agencies of state government. In approving the installation of additional communications equipment or systems, the *department* shall first consult with and consider the recommendations and advice of the executive heads of the various state agencies;

(4) *Approve* standards and procedures for selection, acquisition, and operation of communication equipment;

(5) *Insure* that all communications equipment is properly maintained. The *department* is authorized to contract the equipment maintenance if it is in the state's best interest. The *department* shall maintain cost records and bill agencies for services rendered;

(6) *Provide* assistance to the legislature, governor, and state agencies relative to state and interstate communication matters;

(7) *Provide* a means whereby political subdivisions of the state may utilize the state communications system, upon such terms and under such conditions the *department* may establish;

(8) *Accept* federal funds granted by Congress or by executive order for any purposes of this *section*, as well as gifts and donations from individuals and private organizations or foundations;

(9) *Accept* and provide for the technical transmission of programs provided by educational television."

Section 87. Section 82-3329, R.C.M. 1947, is amended to read as follows:

**"82-3329. Bases of director's decisions.** It is incumbent on the *department of administration* to base all decisions pertinent to Montana's state communication services on the factors of cost, quality of service, availability of service, and ability to maintain the system."

Section 88. Section 82-3331, R.C.M. 1947, is amended to read as follows:

**"82-3331. Exemption of law enforcement communications system — exception.** The provisions of this act shall not apply to the law enforcement communications system, or its successor, except as to the

provisions dealing with the purchase, maintenance, and allocation of communication facilities. *However, the department of justice shall co-operate with the department of administration to co-ordinate the communications networks of the state.*"

Section 89. There is a new section to be numbered 82A-201.1, R.C.M. 1947, which reads as follows:

82A-201.1. **Functions of department.** The department and its units are responsible for administering laws pertaining to the general administrative and fiscal functions of state government, including, but not limited to, laws pertaining to:

- (1) Highway patrolmen's retirement system (Title 31, chapter 2);
- (2) Federal social security (Title 59, chapter 11);
- (3) Public employees retirement system (Title 68, chapters 1 through 14);
- (4) Teachers' retirement system (Title 75, chapter 62);
- (5) State capitol repair and reconstruction (Title 78, chapter 7);
- (6) Insurance on state buildings (Title 78, chapter 11);
- (7) Deposit and investment of state funds (Title 79, chapter 3);
- (8) State budget (Title 79, chapter 10);
- (9) State general fund warrants (Title 79, chapter 11);
- (10) Unified investment plan (Title 79, chapter 12);
- (11) Refunding state bonds (Title 79, chapter 18);
- (12) Long-range building program bonds (Title 79, chapter 22);
- (13) Administrative costs of agencies (Title 79, chapter 24);
- (14) Investments (Title 81, chapter 10);
- (15) Purchasing for state agencies (Title 82, chapter 19);
- (16) General administrative functions (Title 82, chapter 33);
- (17) Judges' retirement system (Title 93, chapter 11)."

Section 90. Section 82A-204, R.C.M. 1947, is amended to read as follows:

"82A-204. **Board of investments — allocation — composition — designation.** (1) There is a board of investments.

(2) The board is allocated to the department for administrative purposes only as prescribed in section 82A-108. Personnel for the board shall be appointed by the department subject to the approval of the board.

(3) The board is composed of five (5) members, appointed by the governor as prescribed in section 82A-112, informed and experienced in the subject of investments.

(4) The board of investments has the sole authority to *invest state funds*. No other agency may invest state funds. *The board shall direct the investment of state funds in accordance with the laws and constitution of this state. The board shall (a) assist agencies with public money to determine if, when and how much surplus cash is available for investment; (b) determine the amount of surplus treasury cash to be invested; (c) determine the type of investment to be made, and (d) prepare the claim to pay for the investment.* The board has the power to veto any investments made under its general supervision.

(5) The board is designated as a quasi-judicial board for the purposes of section 82A-112."

Section 91. Section 82A-206, R.C.M. 1947, is amended to read as follows:

**"82A-206. Merit system council — allocated — composition.** (1) *There is a merit system council.*

(2) The council is *allocated* to the department for administrative purposes only as prescribed in section 82A-108. However, the council may hire its own personnel, and section 82A-108(2)(d) does not apply.

(3) The council is composed of three (3) members, appointed by the governor for six (6) year overlapping terms. The governor shall appoint the members upon the recommendation of the agencies which participate in the joint merit system, and in accordance with federal requirements.

(4) Members shall be compensated and reimbursed as are members of advisory councils in section 82A-110(5)."

Section 92. Section 82A-207, R.C.M. 1947, is amended to read as follows:

**"82A-207. Board of examiners — allocated.** (1) *There is a board of examiners.*

(2) The board is *allocated* to the department for administrative purposes only as prescribed in section 82A-108. However, the board may hire its own personnel, and section 82A-108(2)(d) does not apply."

Section 93. Section 82A-209, R.C.M. 1947, is amended to read as follows:

**"82A-209. State depository board — allocated.** (1) *There is a state depository board.*

(2) The board is *allocated* to the department for administrative purposes only as prescribed in section 82A-108."

Section 94. Section 82A-210, R.C.M. 1947, is amended to read as follows:

**"82A-210. Board of administration — composition — terms — allocated.** (1) *There is a board of administration.*

(2) *The board consists of five (5) members appointed by the governor. The members are:*

(a) *Three (3) public employees who shall be members of the retirement system. Not more than one (1) of these members may be an employee of the same department.*

(b) *Two (2) members at large.*

(3) *The term of office for each member is five (5) years.*

(4) *The board is allocated to the department for administrative purposes only as prescribed in section 82A-108."*

Section 95. Section 82A-212, R.C.M. 1947, is amended to read as follows:

**"82A-212. Teachers' retirement board — composition — terms — allocated.** (1) *There is a teachers' retirement board.*

(2) *The board consists of five (5) members appointed by the governor. The members are:*

(a) *The superintendent of public instruction;*

(b) *Two (2) persons appointed from the teaching profession who are members of the retirement system;*

(c) *Two (2) persons appointed as representatives of the public.*

(3) *Each appointed member of the board shall serve a term of four (4) years. Each appointed member shall take and subscribe to the oath prescribed by section 3 of article III of the constitution of the state. The oath shall be filed in the office of the secretary of state.*

(4) *The board is allocated to the department for administrative purposes only as prescribed in section 82A-108. However, the board may hire its own personnel, and section 82A-108(2)(d) does not apply."*

Section 96. Section 93-1109, R.C.M. 1947, is renumbered 82A-210.2, and is amended to read as follows:

**"82A-210.2. Montana judges' retirement board.** There is a Montana judges' retirement board. The board *consists of the same* five (5) members who compose the board of administration, *provided for in section 82A-210."*

Section 97. There is a new section to be numbered 82A-217, R.C.M. 1947, which reads as follows:

**82A-217. Name changes.** Wherever the words "state budget director" or "budget director" appear in sections 43-1002, 43-1003, and 43-1006, the words "department of administration" are substituted therefor.

Section 98. There is a new section to be numbered 82A-218, R.C.M. 1947, which reads as follows:

**82A-218. Name changes.** Wherever the words "state controller" or "controller" appear in sections 6-105, 6-107, 6-108, 10-1004, 16-2723, 43-218, 59-701, 59-701.1, 59-701.2, 59-1105, 75-6206, 78-302, 78-910, 78-1203, 79-101, 79-104, 79-202, 79-414, 79-415, 79-602, 79-2308, 82-1312, 82-1313, 82-1314, 82-3307, 82-3308, 82-3309, 82-3317, and 82-3319, the words "department of administration" are substituted therefor.

Section 99. There is a new section to be numbered 82A-219, R.C.M. 1947, which reads as follows:

82A-219. **Name changes.** Wherever the words "state board of examiners" or "board of examiners" appear in sections 25-225 and 82-1804, the words "department of administration" are substituted therefor.

Section 100. There is a new section to be numbered 82A-220, R.C.M. 1947, which reads as follows:

82A-220. **Name changes.** Wherever the words "state board of land commissioners" appear in sections 11-2313, 11-2314, 11-2326, 11-2329, 16-2029, 16-2043, 16-2046, 68-1405, the words "board of investments" are substituted therefor.

Section 101. There is a new section to be numbered 82A-221, R.C.M. 1947, which reads as follows:

82A-221. **Name changes.** Wherever the words "state purchasing department," "purchasing department," or "state purchasing agent," appear in sections 6-501 and 82-1157, the words "department of administration" are substituted therefor.

Section 102. The publishers of the Revised Codes of Montana, 1947, are directed, under the supervision of the supreme court of Montana, to make the substitutions enumerated in sections 97, 98, 99, 100, and 101 of this act, when reprinting sections or portions of sections of the Revised Codes in either supplements to or replacement volumes for the Revised Codes.

Section 103. Sections 25-504, 31-202, 31-203, 60-301 through 60-306, 68-1403, 75-6203, 79-2401 through 79-2408, 81-1009 through 81-1014, 82-106 through 82-108, 82-602, 82-902, 82-1106, 82-1901, 82-3301 through 82-3305, 82-3322 through 82-3324, 82-3327, 82-3328, 82A-202, 82A-203, 82A-205, 82A-208, 82A-211, 82A-213, 93-1108, are repealed.

Approved March 28, 1974

## CHAPTER NO. 327

AN ACT TO AMEND SECTION 11-3214, R.C.M. 1947, RELATING TO COMMISSIONERS UNDER COMMISSIONER-MANAGER FORM OF MUNICIPAL GOVERNMENT, PROHIBITING THE HOLDING OF ANY PARTISAN POLITICAL OFFICE OR EMPLOYMENT, ELIMINATING QUALIFICATION OF REAL ESTATE OWNERSHIP AND PROHIBITION AGAINST HOLDING OTHER PUBLIC OFFICE OR EMPLOYMENT.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 11-3214, R.C.M. 1947, is amended to read as follows:



**"11-3214. Qualifications of commissioners — interest in contracts not allowed — holding any political office forbidden — accepting gratuities forbidden.** Members of the commission shall be residents of the city or town and have the qualifications of electors. Commissioners and other officers and employees shall not be interested in the profits or emoluments of any contract, job, work, or service for the municipality, *and shall not hold any partisan political office or employment.* Any commissioner who shall cease to possess any of the qualifications herein required, shall forthwith forfeit his office, and any such contract in which any member is or may be interested, may be declared void by the commission.

No commissioner or other officer or employee of said city or town shall accept any frank, free ticket, pass or service directly or indirectly, from any person, firm or corporation upon terms more favorable than are granted to the public generally. Any violation of the provisions of this section shall be a misdemeanor and shall also be sufficient cause for the summary removal or discharge of the offender. Such provisions for free service shall not apply to policemen or firemen in uniform or wearing their official badges, where the same is provided by ordinance, nor to any commissioner, nor to the city manager, nor to the city attorney, upon official business, nor to any other employee or official of said city on official business who exhibits written authority signed by the city manager."

Approved March 28, 1974

## CHAPTER NO. 328

AN ACT FOR THE GENERAL REVISION OF THE LAWS RELATING TO ABUSED, NEGLECTED AND DEPENDENT CHILDREN OR YOUTH; AND REPEALING SECTIONS 10-501 THROUGH 10-519, R.C.M. 1947.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is a new section to be numbered 10-1300, R.C.M. 1947, which reads as follows:

10-1300. **Declaration of policy.** It is hereby declared to be the policy of the state of Montana:

(1) to insure that all youth are afforded an adequate physical and emotional environment to promote normal development;

(2) to compel in proper cases the parent or guardian of a youth to perform the moral and legal duty owed to the youth;

(3) to achieve these purposes in a family environment whenever possible; and

(4) to preserve the unity and welfare of the family whenever possible.

Section 2. There is a new section to be numbered 10-1301, R.C.M. 1947, which reads as follows:

10-1301. **Definitions.** (1) "Child" or "youth," for purposes of this act, means any person under eighteen (18) years of age.

(2) "Abuse" or "neglect" means:

(a) The commission or omission of any act or acts which materially affect the normal physical or emotional development of a youth, any excessive physical injury, sexual assault or failure to thrive, taking into account the age and medical history of the youth, shall be presumptive of "material affect" and non-accidental; or

(b) The commission or omission of any act or acts by any person in the status of parent, guardian or custodian who thereby and by reason of physical or mental incapacity or other cause, refuses, or with state and private aid and assistance is unable to discharge the duties and responsibilities for proper and necessary subsistence, education, medical or any other care necessary for his physical, moral and emotional well-being.

(3) "Dependent youth" means a youth who is abandoned, dependent upon the public for support, and who is destitute or is without parents or guardian or under the care and supervision of a suitable adult or who has no proper guidance to provide for his necessary physical, moral or guardian or under the care and supervision of a suitable adult or who has no proper guidance to provide for his necessart physical, moral and emotional well-being. A child may be considered dependent and legal custody transferred to a licensed agency if the parent or parents voluntarily relinquish custody of said child.

(4) "Youth in need of care" means a youth who is depedent or is suffering from abuse or neglect within the meaning of this act.

Section 3. There is a new section to be numbered 10-1302, R.C.M. 1947, which reads as follows:

10-1302. **Jurisdiction and venue.** (1) In all matters arising under this act, the youth court shall have concurrent jurisdiction with the district courts over all youths who are within the state of Montana for any purpose, or any youth or other person subject to this act who under a temporary or permanent order of the court has voluntarily or involuntarily removed himself from the state or the jurisdiction of the court, or any person who is alleged to have abused, neglected or caused the dependency of a youth who is in the state of Montana for any purpose.

(2) Venue shall be determined pursuant to section 10-1207, R.C.M. 1947.

Section 4. There is a new section to be numbered 10-1308, R.C.M. 1947, which reads as follows:

10-1308. **Confidentiality.** The case records of the department of social and rehabilitation services, its local affiliate, the county welfare department, the county attorney and the court concerning actions taken under this act shall be kept confidential unless the court determines that they should be released.

Section 5. There is a new section to be numbered 10-1309, R.C.M. 1947, which reads as follows:

10-1309. **Emergency protective service.** Any social worker of the department of social and rehabilitation services, the county welfare department, peace officer or county attorney who has reason to believe any youth is in immediate or apparent danger of violence or serious injury shall have the authority to immediately remove the youth and place him in a protective facility. The department may make a request for further assistance from the law enforcement agency or take such legal action as may be appropriate.

A petition shall be filed within forty-eight (48) hours of emergency placement of a child unless arrangements acceptable to the agency for the care of the child have been made by the parents.

The department of social and rehabilitation services and the county welfare department shall comply with the judicial procedures set forth in section 10-1305, R.C.M. 1947.

The department of social and rehabilitation services and the county welfare department shall make such necessary arrangements for the youth's well-being as are required prior to the court hearing.

Section 6. There is a new section to be numbered 10-1310, R.C.M. 1947, which reads as follows:

10-1310. **Petitions.** (1) The county attorney shall be responsible for filing all petitions alleging abuse, neglect and dependency. He may require all state, county and municipal agencies, including law enforcement agencies, to conduct such investigations and furnish such reports as may be necessary.

(2) Such petitions shall be given preference by the court in setting hearing dates.

(3) A petition alleging abuse, neglect or dependency, is a civil action brought in the name of the state of Montana. The rules of civil procedure shall apply except as herein modified. Proceedings under a petition shall not be a bar to criminal prosecution.

(4) The parents or parent, guardian or other person or agency having legal custody of the youth named in the petition, if residing in the state, shall be served personally with a copy of the petition and summons at least five (5) days prior to the date set for hearing; if such person or agency resides out of state or is not found within the state, the rules of civil procedure relating to service of process in such cases shall apply.

(5) In the event service cannot be made upon the parents or parent, guardian or other person or agency having legal custody, the court shall appoint an attorney to represent the unavailable party where in the opinion of the court the interests of justice require.

(6) Where a parent of the child is a minor notice shall be given to the minor parent's guardian and if there is no guardian the court shall appoint one.

(7) Any person interested in any cause under this act shall have the right to appear.

(8) Except where the proceeding is instituted or commenced by a representative of social and rehabilitation services, a citation shall be issued and served upon a representative of social and rehabilitation services prior to the court hearing.

(9) The petition shall:

- (a) state the nature of the alleged abuse, neglect or dependency;
- (b) state the full name, age and address of the youth, his parents or guardian or person having legal custody of the youth;
- (c) state the names, addresses and relationship to the youth and all persons who are necessary parties to the action.

(10) The petition may ask for the following relief:

- (a) temporary investigative authority and protective services;
- (b) temporary legal custody;
- (c) limited legal custody;
- (d) permanent legal custody, including the right to consent to adoption;
- (e) appointment of guardian ad litem;
- (f) any combination of the above or such other relief as may be required for the best interest of the youth.

(11) The petition may be modified for different relief at any time within the discretion of the court.

(12) The court may at any time on its own motion, or the motion of any party, appoint a guardian ad litem for the youth, or counsel for any indigent party.

(13) This section shall not apply to a petition for temporary investigative authority and protective services.

Section 7. There is a new section to be numbered 10-1311, R.C.M. 1947, which reads as follows:

**10-1311. Petition and order for temporary investigative authority and protective services.**

(1) In cases where it appears that a youth is abused or neglected or is in danger of being abused or neglected the county attorney may file a petition for temporary investigative authority and protective services.

(2) A petition for temporary investigative authority and protective services shall state the specific authority requested and the facts establishing probable cause that a youth is abused or neglected or is in danger of being abused or neglected.

(3) The petition for temporary investigative authority and protective services shall be supported by an affidavit signed by the county attorney

or a social and rehabilitation services report stating in detail the facts upon which the request is based.

(4) Upon the filing of a petition for temporary investigative authority and protective services, the court may issue an order:

(a) granting such relief as may be required for the immediate protection of the youth.

(b) The order shall be served by a peace officer or a representative of the state social and rehabilitation services on the person or persons named therein.

(c) The order shall require the person served to immediately comply with the terms thereof or upon failure to so comply to appear before the court issuing the order on the date specified and show cause why he has not complied with the order. Except as otherwise provided herein, the rules of civil procedure shall apply.

(d) Upon a failure to comply or show cause the court may hold the person in contempt or place temporary legal custody of the youth with the state social and rehabilitation services until further order.

(e) The court may grant the following kinds of relief:

(i) right of entry by peace officer or state social and rehabilitation services worker;

(ii) medical and psychological evaluation of youth or parents, guardians, or person having legal custody;

(iii) require the youth, parents, guardians or person having legal custody to receive counseling services;

(iv) place the youth in temporary medical facility or facility for protection of the youth;

(v) require the parents, guardian or other person having custody to furnish such services as the court may designate;

(vi) such other temporary disposition as may be required in the best interest of the youth.

Section 8. There is a new section to be numbered 10-1312, R.C.M. 1947, which reads as follows:

10-1312. **Hearing.** (1) In a hearing on a petition under section 10-1310, R.C.M. 1947, the court shall determine whether said youth is an abused, neglected or dependent child, and ascertain, as far as possible, the cause thereof.

(2) The court shall hear evidence regarding the residence of the child, whereabouts of the parents, guardian or nearest adult relative, the financial ability of any such parents or parent, to pay the cost of care of the child, whether or how long the child has been maintained in whole or in part by public or private charity, and may take into consideration the report of the county welfare department filed with the clerk of the court, pursuant to section 10-1313, R.C.M. 1947.

(3) In all civil and criminal proceedings relating to abuse, neglect or dependency the doctor-patient privilege and husband-wife privilege shall not apply to the extent any testimony relates to such matters.

Section 9. There is a new section to be numbered 10-1313, R.C.M. 1947, which reads as follows:

10-1313. **Investigation of parents' financial ability.** Whenever any petition is filed with the clerk of the district court alleging abuse, neglect or dependency, the clerk of such court shall immediately deliver to the county welfare department of the county in which the petition is filed, a copy of the petition with a notation thereon giving the day and time fixed by the court for hearing the petition. Upon receipt of such copy of petition the county welfare department shall make an investigation for the purpose of ascertaining whether the parent or parents, if any, of the child live within the county and the financial ability of such parent or parents, if any, to pay the cost of supporting the child in a foster home, and shall file with the clerk of such court, before the time fixed for the hearing, a written report of such investigation. If, upon hearing, the court finds and determines that the child has parents, or a parent, who is financially able to pay a part or the whole of such cost, and the child is ordered placed in a foster home, the court shall make an order requiring such parents, or parent, to pay such amount as the court may deem proper. A copy of the written report shall be provided to all parties to the proceeding before the time filed for hearing.

If the child is placed in a foster home, the state department of social and rehabilitation services shall pay one-half ( $\frac{1}{2}$ ) of the cost thereof, and the county in which such child has residence shall pay the other one-half ( $\frac{1}{2}$ ) thereof. Any amount collected from a parent or parents, when a child is placed in a foster home, shall be transmitted to the state department of social and rehabilitation services. The department shall then pay to the county one-half ( $\frac{1}{2}$ ) of the amount so collected.

Section 10. There is a new section to be numbered 10-1314, R.C.M. 1947, which reads as follows:

10-1314. **Judgment.** (1) If a youth is found to be abused, neglected, or dependent, the court may enter its judgment making any of the following dispositions to protect the welfare of the youth:

(a) permit the youth to remain with his parents or guardian subject to those conditions and limitations the court may prescribe;

(b) transfer legal custody to any of the following:

(i) department of social and rehabilitation services;

(ii) a child-placing agency willing and able to assume responsibility for the education, care and maintenance of the youth and which is licensed or otherwise authorized by law to receive and provide care of the youth; or

(iii) a relative or other individual who, after study by a social service agency designated by the court, is found by the court to be qualified to receive and care for the youth;

(c) order any party to the action to do what is necessary to give effect to the final disposition, including undertaking medical and psychological evaluations, treatment and counseling;

(d) order such further care and treatment as the court may deem in the best interest of the youth.

(2) Whenever the court vests legal custody in any agency, institution or department it shall transmit with the dispositional judgment copies of any medical report, and such other clinical, predisposition or other reports and information as may be pertinent to the care and treatment of the youth.

(3) Any youth found to be abused, neglected or dependent may be committed to the Montana children's center, and if the center is unable to receive the child, or if, for any other reason, it appears to be in the best interest of the child, the court may make such other disposition of the child as the court deems best for his social and physical welfare. The form of commitment shall be as follows:

#### ORDER OF COMMITMENT

State of Montana, County of ....., ss:  
In the District Court for the.....Judicial  
District.

On the .....day of ....., 19...., ....., minor of this county, was charged on the petition of ....., of county attorney of.....county, with being an abused or neglected or dependent child. Upon due proof I find that it is for the best interests of the child that he be taken from the custody of his parents, guardian or other person having custody of him.

The names, addresses and occupations of the parents are:

| Name  | Address | Occupation |
|-------|---------|------------|
| ..... | .....   | .....      |
| ..... | .....   | .....      |

The child's guardian is .....

The child is in the custody of .....

It is ordered that.....be committed to.....  
until discharged as provided by law.

Witness my hand this.....day of.....A.D. 19....  
.....  
Judge

(4) Transfer of legal custody of a child shall include guardianship of any assets or estate of the child, unless otherwise specified by the court.

(5) Except in cases in which the court permanently terminates all parental rights or rights of the guardian of the youth, the court shall retain jurisdiction over the case and may subsequently modify any disposition ordered pursuant to this section.

Section 11. There is a new section to be numbered 10-1315, R.C.M. 1947, which reads as follows:

10-1315. **Responsibility of providing protective services.** The department of social and rehabilitation services and the county welfare department shall have the primary responsibility to provide the protective services authorized by this act and shall have the authority pursuant to this act to take temporary, limited or permanent custody of a child when ordered to do so by the court, including the right to give consent to adoption.

Section 12. There is a new section to be numbered 10-1322, R.C.M. 1947, which reads as follows:

10-1322. **Punishment of parents and other adults.** (1) If the evidence indicates violation of the criminal code, it shall be the responsibility of the county attorney to file appropriate charges against the alleged offender.

(2) District court shall have original jurisdiction under this section.

Section 13. Sections 10-501 through 10-519, R.C.M. 1947, are repealed.

Section 14. Section 10-901 is renumbered section 10-1303; section 10-902 is renumbered section 10-1304; section 10-903 is renumbered section 10-1305; section 10-904 is renumbered section 10-1306; section 10-905 is renumbered section 10-1307; section 10-520 is renumbered section 10-1316; section 10-521 is renumbered section 10-1317; section 10-522 is renumbered section 10-1318; section 10-523 is renumbered section 10-1319; section 10-524 is renumbered section 10-1320; and section 10-525 is renumbered section 10-1321.

Approved March 28, 1974

## CHAPTER NO. 329

AN ACT FOR THE GENERAL REVISION OF THE LAWS RELATING TO JUVENILES AND JUVENILE COURTS; PROVIDING FOR OTHER MATTERS RELATING TO TREATMENT AND PROCEDURES CONCERNING YOUTH; AMENDING SECTIONS 10-615, 10-627, 10-628, 10-631, 10-1101, 10-1102, 10-1103, 10-1104, 10-1105, 10-1106, 10-1107, 10-1108, 10-1109, 10-1110, 10-1111, AND 94-2-109, R.C.M. 1947; AND REPEALING SECTIONS 10-601, 10-602, 10-603, 10-604.1, 10-605.1, 10-606, 10-607, 10-608, 10-608.1, 10-610, 10-611, 10-611.1, 10-612, 10-613, 10-614, 10-616, 10-617, 10-621, 10-622, 10-623, 10-624, 10-625, 10-626, 10-629, 10-630, AND 10-633.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is a new section to be numbered 10-1201, R.C.M. 1947, which reads as follows:

10-1201. **Short title.** This act may be cited as the "Montana Youth Court Act."



Section 2. There is a new section to be numbered 10-1202, R.C.M. 1947, which reads as follows:

10-1202. **Declaration of purpose.** The Montana Youth Court Act shall be interpreted and construed to effectuate the following express legislative purposes:

(1) to preserve the unity and welfare of the family whenever possible, and to provide for the care, protection and wholesome mental and physical development of a youth coming within the provisions of the Montana Youth Court Act;

(2) to remove from youth committing violations of the law the element of retribution and to substitute therefore a program of supervision, care and rehabilitation;

(3) to achieve the purposes of (1) and (2) of this section in a family environment whenever possible, separating the youth from his parents only when necessary for the welfare of the youth or for the safety and protection of the community;

(4) to provide judicial procedures in which the parties are assured a fair hearing and recognition and enforcement of their constitutional and statutory rights.

Section 3. There is a new section to be numbered 10-1203, R.C.M. 1947, which reads as follows:

10-1203. **Definitions.** For the purposes of the Montana Youth Court Act, unless otherwise stated:

(1) "Adult" means an individual who is eighteen years of age or older.

(2) "Agency" means the department of institutions, the department of social and rehabilitation services, and any division or department of either.

(3) "Commit" means to transfer to legal custody.

(4) "Court," when used without further qualification, means the youth court of the district court.

(5) "Foster home" means a private residence approved by the court for placement of a youth.

(6) "Guardianship" means the status created and defined by law between a youth and an adult with the reciprocal rights, duties and responsibilities.

(7) "Judge," when used without further qualification, means the judge of the youth court.

(8) "Legal custody" means the legal status created by order of a court of competent jurisdiction that gives a person the right and duty to: have physical custody of the youth; determine with whom the youth shall live and for what period; protect, train, and discipline the youth; and provide the youth with food, shelter, education, and ordinary medical care. An individual granted legal custody of a youth shall personally exercise his

rights and duties as guardian unless otherwise authorized by the court entering the order.

(9) "Parent" means the natural or adoptive parent but does not include a person whose parental rights have been judicially terminated, nor does it include the putative father of an illegitimate youth unless his paternity is established by an adjudication or by other clear and convincing proof;

(10) "Youth" means an individual who is less than eighteen years of age without regard to sex or emancipation.

(11) "Youth court" means the court established pursuant to this act to hear all proceedings in which a youth is alleged to be a delinquent youth, a youth in need of supervision or a youth in need of care, and includes the youth court, the judge and probation officers.

(12) "Delinquent youth" means a youth:

(a) who has committed an offense which, if committed by an adult, would constitute a criminal offense;

(b) who, having been placed on probation as a delinquent youth or a youth in need of supervision, violates any condition of his probation.

(13) "Youth in need of supervision" means a youth who commits an offense prohibited by law which, if committed by an adult, would not constitute a criminal offense, including but not limited to a youth who:

(a) violates any Montana municipal or state law regarding use of alcoholic beverages by minors; or

(b) habitually disobeys the reasonable and lawful demands of his parents or guardian, or is ungovernable and beyond their control; or

(c) being subject to compulsory school attendance is habitually truant from school; or

(d) has committed any of the acts of a delinquent youth but whom the youth court in its discretion chooses to regard as a youth in need of supervision.

(14) "Youth in need of care" means a youth as defined in section 10-1301.

(15) "Custodian" means a person other than a parent or guardian, to whom legal custody of the youth has been given, but does not include a person who has only physical custody;

(16) "Necessary parties" include the youth, his parents, guardian, custodian or spouse;

(17) "Detention facility" means a residential facility for the detention and rehabilitation of delinquent youth such as Pine Hills School in Miles City and Mountain View School in Helena.

Section 4. There is a new section to be numbered 10-1204, R.C.M. 1947, which reads as follows:

10-1204. **Constitutionality.** The provisions of this act are separate

and severable. It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 5. There is a new section to be numbered 10-1205, R.C.M. 1947, which reads as follows:

10-1205. **Number and gender.** The singular includes the plural, the plural includes the singular, and the masculine includes the feminine unless the context indicates otherwise.

Section 6. There is a new section to be numbered 10-1206, R.C.M. 1947, which reads as follows:

10-1206. **Jurisdiction of the court.** (1) The court has exclusive original jurisdiction of all proceedings under the Montana Youth Court Act in which a youth is alleged to be a delinquent youth; a youth in need of supervision; or a youth in need of care, or concerning any person under twenty-one (21) years of age charged with having violated any law of the state or ordinance of any city or town prior to having become eighteen (18) years of age.

(2) Justice, municipal and police courts shall have concurrent jurisdiction with the youth court over all traffic and fish and game violations alleged to have been committed by a youth except that the following alleged violations are under the exclusive jurisdiction of the court:

(a) driving while intoxicated as defined in section 32-2142, R.C.M. 1947;

(b) failing to stop at an accident as defined in section 32-1202, R.C.M. 1947; and

(c) driving without a valid license or permit as defined in sections 31-125 and 31-127, R.C.M. 1947, after having been previously convicted of the same offense.

Section 7. There is a new section to be numbered 10-1207, R.C.M. 1947, which reads as follows:

10-1207. **Venue and transfer.** (1) The county where a youth is a resident has initial jurisdiction over any youth alleged to be a delinquent youth; a youth in need of supervision; or a youth in need of care, and the youth court of that county shall assume the initial handling of the case. Transfers of venue may be made to any of the following counties in the state:

(a) the county in which the youth is apprehended or found;

(b) the county in which the youth is alleged to have violated the law;

(c) the county of residence of the youth's parents or guardian.

(2) A change of venue may be ordered at any time by the concurrence of the youth court judges of both counties in order to assure a fair, impartial and speedy hearing and final disposition of the case.

(3) In the case of a youth sixteen (16) years of age or older who is accused of one of the serious offenses listed in section 10-1229, the court in the county where the offense occurred shall serve as a transfer hearing court, and if the youth is to be tried in district court the charge shall be filed and trial held in the district court of the county where the offense occurred.

Section 8. There is a new section to be numbered 10-1208, R.C.M. 1947, which reads as follows:

10-1208. **Retention of jurisdiction.** Once a court obtains jurisdiction over a youth the court retains jurisdiction unless terminated by the court or by mandatory termination in the following cases:

- (1) at the time the proceedings are transferred to adult criminal court;
- (2) at the time of commitment of the youth to the custody of the state department of institutions;
- (3) in any event, at the time the youth reaches the age of twenty-one (21) years.

Section 9. There is a new section to be numbered 10-1209, R.C.M. 1947, which reads as follows:

10-1209. **Intake procedure.** (1) Whenever the court receives information from any agency or person based upon reasonable grounds that a youth is, or appears to be a delinquent youth or a youth in need of supervision; or being subject to a court order or consent order, has violated the terms thereof; the probation officer shall make a preliminary inquiry into the matter.

(2) The probation officer may require the presence of any person relevant to the inquiry, and may request subpoenas from the judge to accomplish this purpose. The probation officer may require investigation of the matter by any law enforcement agency or any other appropriate state or local agency.

(3) If the probation officer determines that the facts indicate a youth in need of care, the matter shall be immediately referred to the state department of social and rehabilitation services.

(4) The probation officer in the conduct of the preliminary inquiry shall:

(a) advise the youth of the youth's rights under this act and the Constitutions of the State of Montana and the United States;

(b) determine whether the matter is within the jurisdiction of the court;

(c) determine, if the youth is in detention or custody, whether such detention or custody should be continued.

Once relevant information is secured, the probation officer shall:

(d) determine whether the interest of the public or the youth requires that further action be taken;

(e) terminate the inquiry upon the determination that no further action be taken;

(f) release the youth immediately upon the determination that the filing of a petition is not authorized.

(5) The probation officer upon determining that further action is required may:

(a) provide counseling; refer the youth and his parents to another agency providing appropriate services; or take any other action or make any informal adjustment that does not involve probation or detention;

(b) provide for treatment or adjustment involving probation or other disposition authorized under section 10-1210; provided, however, that such treatment or adjustment is voluntarily accepted by the youth's parents, or guardian, and the youth; and provided further that said matter is referred immediately to the county attorney for review and that the probation officer proceed no further unless authorized by the county attorney;

(c) refer the matter to the county attorney for filing a petition charging the youth to be a delinquent youth or a youth in need of supervision.

(6) A petition charging a youth held in custody or detention must be filed within five (5) working days from the date the youth was first confined or the petition shall be dismissed and the youth released unless good cause is shown to further detain such youth.

(7) If no petition is filed under this section, the complainant and victim, if any, shall be informed by the probation officer of the action and the reasons therefor and shall be advised of the right to submit the matter to the county attorney for review. The county attorney upon receiving a request for review, shall consider the facts, consult with the probation officer, and make the final decision as to whether a petition shall or shall not be filed.

Section 10. There is a new section to be numbered 10-1210, R.C.M. 1947, which reads as follows:

**10-1210. Consent adjustment without petition.** (1) Before a petition is filed, the probation officer may enter into an informal adjustment, give counsel and advice to the youth and other interested parties, if it appears:

(a) the admitted facts bring the case within the jurisdiction of the court;

(b) counsel and advice without filing a petition would be in the best interests of the child and the public.

(2) Any probation or other disposition imposed under this section against any youth must conform to the following procedures:

(a) Every consent adjustment shall be reduced to writing, signed by the youth and his parents or the person having legal custody of the youth.

(b) Approval by the youth court judge shall be required where the

complaint alleges commission of a felony or where the youth has been or will be in any way detained.

(3) An incriminating statement relating to any act or omission constituting delinquency or need of supervision made by the participant to the person giving counsel or advice in the discussions or conferences incident thereto shall not be used against the declarant in any proceeding under this act, nor shall the incriminating statement be admissible in any criminal proceeding against the declarant.

(4) The following dispositions may be imposed by informal adjustment:

(a) Probation;

(b) Placement of the youth in a licensed foster home or other home approved by the court;

(c) Placement of the youth in a private agency responsible for the care and rehabilitation of such a youth, including but not limited to, a district youth guidance home;

(d) Transfer of legal custody of the youth to the department of institutions, provided, however, that such commitment shall not authorize the department of institutions to place the youth in a detention facility as defined by this act and such commitment shall not exceed a period of six (6) months without a subsequent order of the court, after notice and hearing.

Section 11. There is a new section to be numbered 10-1211, R.C.M. 1947, which reads as follows:

**10-1211. Taking into custody.** (1) A youth may be taken into custody under the following circumstances:

(a) by a law enforcement officer pursuant to a lawful order or process of any court;

(b) by a law enforcement officer pursuant to a lawful arrest for violation of the law;

(c) by a law enforcement officer, agent of the department of social and rehabilitation services, county attorney, or a person or physician treating a youth when there is reason to believe the youth is a youth in need of care and that the residence of the youth or the custody by the person legally responsible for the youth presents an imminent danger to the life or health of the youth.

(2) The taking of a youth into custody is not an arrest except for the purpose of determining the validity of the taking under the constitution of Montana or the United States.

Section 12. There is a new section to be numbered 10-1212, R.C.M. 1947, which reads as follows:

**10-1212. Detention of youth.** A youth taken into custody shall not be detained prior to the hearing on the petition except when: his detention or care is required to protect the person or property of others or of the youth; he may abscond or be removed from the jurisdiction of the court;

he has no parent, guardian, or other person able to provide supervision and care for him and return him to the court when required; or an order for his detention has been made by the court pursuant to this act.

Section 13. There is a new section to be numbered 10-1213, R.C.M. 1947, which reads as follows:

**10-1213. Release or delivery from custody.** (1) Whenever a peace officer believes, on reasonable grounds, that a youth can be released to a person who has custody of the youth, then the peace officer may release the youth to that person upon receiving a written promise from the person to bring the youth before the probation officer at a time and place specified in the written promise; or a peace officer may release the youth under any other reasonable circumstances.

(2) Whenever the peace officer believes, on reasonable grounds, that the youth must be held in custody, then the peace officer must notify the probation officer without undue delay. If it is necessary to hold the youth pending appearance before the youth court, then the youth must be held in some place that has been approved by the youth court and completely separated from adult offenders.

(3) Whenever any peace officer has apprehended a youth, he shall immediately notify the probation officer of such fact and shall, as soon as practicable, provide the probation officer with a written report of his reasons for the apprehension.

Section 14. There is a new section to be numbered 10-1214, R.C.M. 1947, which reads as follows:

**10-1214. Place of detention.** (1) A youth alleged to be a delinquent youth or youth in need of supervision may be detained only in:

- (a) a licensed foster home or a home approved by the court;
- (b) a facility operated by a licensed child welfare agency;
- (c) a district youth guidance home or other youth facility or center which is under the direction or supervision of the court, other public authority or of a private agency approved by the court; or
- (d) a detention facility;
- (e) any other suitable place or facility, designated or operated by the court. The youth may be detained in a jail or other facility for the detention of adults only if: the facilities in subsection (c) or (d) is not available; the detention is in an area separate and removed from those of adults; it appears to the satisfaction of the court that public safety and protection reasonably require detention; the facilities specified in subsection (a) or (b) are not sufficient; and the court so orders.

(2) The official in charge of a jail or other facility for the detention of adult offenders or persons charged with crime shall inform the court immediately if a person who is or appears to be under the age of eighteen (18) years is received at the facility. Such official shall bring the person before the court upon request or deliver him to a detention facility designated by the court.

(3) A youth alleged to be in need of care shall be placed only in the facilities stated in subsections (a) and (b) of subsection (1) of this section and shall not be detained in a jail or other facility intended or used for the detention of adults charged with criminal offenses or of youths alleged to be delinquents or in need of supervision by virtue of violations of the law.

Section 15. There is a new section to be numbered 10-1215, R.C.M. 1947, which reads as follows:

10-1215. **Petition — form and content.** A petition initiating proceedings under this act shall be signed by the county attorney and shall be entitled, "In the Matter of....., a youth," and shall set forth with specificity:

(1) the facts necessary to invoke the jurisdiction of the court together with a statement alleging the youth to be a delinquent or in need of supervision;

(2) the charge of an offense which shall:

(a) state the name of the offense;

(b) cite in customary form the statute, rule, regulation or other provisions of law which the youth is alleged to have violated;

(c) state the facts constituting the offense in ordinary and concise language and in such manner as to enable a person of common understanding to know what is intended; and

(d) state the time and place of the offense as definitely as can be done;

(3) the name, birth date and residence address of the youth;

(4) the names and residence addresses of parents, guardian, and spouse, of the youth; and if none of the parents, guardian, or spouse, resides or can be found within the state, or if there is none, the adult relative residing nearest to the court;

(5) whether the youth is in custody, and if so, the place of detention or care and the time he was taken into custody;

(6) if any of the matters required to be set forth by this section are not known, a statement of those matters and the fact that they are not known; and

(7) a list of witnesses to be used in proving the commission of the offense or offenses charged in the petition, together with their residence addresses. The names and addresses of any witnesses discovered after the filing of the petition shall be furnished to the youth upon request.

Section 16. There is a new section to be numbered 10-1216, R.C.M. 1947, which reads as follows:

10-1216. **Summons.** (1) After a petition has been filed, summons shall be served directly to the youth; to his parent or parents having actual custody of the youth, or to his guardian or custodian, as the case may be; and to such other persons as the court may direct.



(2) The summons shall require the parties to whom directed to appear personally before the court at the time fixed by the summons to answer the allegations of the petition. The summons shall advise the parties of their right to counsel under the Montana Youth Court Act and shall have attached to it a copy of the petition.

(3) The court may endorse upon the summons an order directing the person or persons having the physical custody or control of the youth to bring the youth to the hearing.

(4) If it appears from any sworn statement presented to the court that the youth needs to be placed in detention or care, the judge may endorse on the summons an order directing the officer serving the summons to at once take the youth into custody and to take him to the place of detention or care designated by the court, subject to the rights of the youth and parent or person having custody of the youth as set forth in the provisions of the Montana Youth Court Act relating to detention criteria and post-detention proceedings.

(5) If any youth is in custody or detained under any provision of this act pending an adjudication, the court, upon petition of the youth, his parents or guardian or his counsel shall, as soon as practicable, conduct a hearing in order to determine whether the circumstances of the case require such custody and the form the custody should take.

Section 17. There is a new section to be numbered 10-1217, R.C.M. 1947, which reads as follows:

10-1217. **Service of summons.** (1) Any youth who is the subject of a proceeding under this act must be personally served with summons at least five (5) days before the time stated for appearance.

(2) Service of summons on all other persons designated in subsection (1) of section 10-1216 shall be made in accordance with Rule 4(D) of the Montana Rules of Civil Procedure, except that in all cases service shall be completed at least five (5) days before the time stated for appearance.

(3) If a party referred to in subsection (2) herein is not personally served before a hearing and has not secluded himself with an attempt to delay or disrupt any proceeding under this act, such party may appear within a reasonable time subsequent to the hearing and, on motion to the court, request a rehearing. The motion may be granted at the discretion of the judge if a rehearing would be in the best interest of the youth.

(4) The court may authorize payment from county funds of costs of service and necessary travel expenses incurred by persons summoned or otherwise required to appear at the hearing.

(5) An actual abandonment of a youth by his parent or parents shall constitute a waiver of summons and notice requirements in this act by the parent or parents. A return endorsed upon the summons showing inability to serve summons in compliance with section 18(2) of this act constitutes prima facie evidence of actual abandonment.

(6) The youth court may, in the interests of justice, shorten the notice requirements contained herein, and such notice of shortened time shall be endorsed on the summons.

(7) A party, other than the youth, may waive service of summons on himself by written stipulation or by voluntary appearance at the hearing. If the youth is present at the hearing, his counsel may waive service of summons in his behalf.

Section 18. There is a new section to be numbered 10-1218, R.C.M. 1947, which reads as follows:

10-1218. **Basic legal rights.** (1) When a youth alleged to be a delinquent youth or a youth in need of supervision is taken into custody, the following requirements must be met:

(a) the youth shall be immediately and effectively advised of his constitutional rights and his rights under this Act;

(b) the youth may waive such rights under the following situations:

(i) when the youth is under the age of twelve (12) years, the parents of the youth may make an effective waiver;

(ii) when the youth is over the age of twelve (12) years, and the youth and his parents agree, they may make an effective waiver; and

(iii) when the youth is over the age of twelve (12) years and the youth and his parents do not agree, the youth may make an effective waiver only with advice of counsel.

(c) In a proceeding alleging a youth to be a delinquent youth:

(i) An extra-judicial statement that would be constitutionally inadmissible in a criminal matter shall not be received in evidence;

(ii) Evidence illegally seized or obtained shall not be received in evidence to establish the allegations of a petition against a youth; and

(iii) An extra-judicial admission or confession made by the youth out of court is insufficient to support a finding that the youth committed the acts alleged in the petition unless it is corroborated by other evidence.

(2) Title 95, R.C.M. 1947, shall apply to all law enforcement investigations relating to a complaint alleging a delinquent youth or youth in need of supervision, except that:

(a) No youth shall be fingerprinted or photographed for criminal identification purposes except by order of the youth court judge.

(b) No fingerprint records or photographs shall be filed with the federal bureau of investigation, state of Montana identification bureau, or any other than the originating agency, except for sending the fingerprints or photographs to any law enforcement agency for comparison purposes in the original investigation.

(c) At such time as the proceedings in the matter including appeals, are complete, the fingerprint records and photographs shall be destroyed; except that such fingerprint records and photographs may be retained by the originating agency for a specific period when ordered by the court for good cause shown.

(3) In all proceedings on a petition alleging a delinquent youth or youth in need of supervision as set forth in subsection (1) of this section, the youth, parents and guardian of the youth shall be advised by the court or, in the absence of the court, by its representative that the youth may be represented by counsel at all stages of the proceedings. If counsel is not retained, or if it appears that counsel will not be retained, counsel shall be appointed for the youth, unless the right to appointed counsel is waived by the youth and the parents or guardian. Neither the youth nor his parent or guardian may waive counsel if commitment to a detention facility or a youth forest camp or to the department of institutions for a period of more than six (6) months may result from adjudication.

(4) The court, at any stage of a proceeding on a petition under this act, may appoint a guardian ad litem for a youth if the youth has no parent or guardian appearing in his behalf, or if their interests conflict with those of the youth. A party to the proceeding or an employee or representative of a party shall not be appointed as guardian ad litem.

(5) In a proceeding on a petition, a party is entitled to: the opportunity to introduce evidence and otherwise be heard on the party's own behalf; confront and cross-examine witnesses testifying against the party; and admit or deny the allegations against the party in the petition.

(6) Persons afforded rights under this act shall be advised of those rights and any other rights existing under law at the time of their first appearance in a proceeding on a petition under the Montana Youth Court Act and at any other time specified in the Youth Court Act or other law.

(7) All post trial motions and other remedies available to an adult in a criminal proceeding under the Montana Code of Criminal Procedure shall be available to a youth proceeded against under this act.

Section 19. There is a new section to be numbered 10-1219, R.C.M. 1947, which reads as follows:

**10-1219. Time limitations on petition hearing.** Unless the allegations of a petition alleging that a youth is a delinquent youth or a youth in need of supervision are determined by a written admission of the allegations by the youth, the petition shall be dismissed with prejudice if a hearing on the petition is not begun within fifteen (15) days after all service is completed. Delays resulting from service of process, or delays resulting from legal actions taken in behalf of the youth, shall not be included in the fifteen (15) day time limitation.

Section 20. There is a new section to be numbered 10-1220, R.C.M. 1947, which reads as follows:

**10-1220. Adjudicatory hearing.** (1) Prior to any adjudicatory hearing, the court shall determine whether the youth admits or denies the offenses alleged in the petition. If the youth denies all offenses alleged in the petition, the youth, his parent, guardian, or attorney may demand a jury trial on such contested offenses; in the absence of such demand, a jury trial is waived. If the youth denies some offenses and admits others, the contested offenses may be dismissed in the discretion of the youth court judge. The adjudicatory hearings shall be set forthwith and accorded a preferential priority.

(2) An adjudicatory hearing shall be held to determine whether the contested offenses are supported by proof beyond a reasonable doubt in cases involving a youth alleged to be delinquent or in need of supervision. If the hearing is before a jury, the jury's function shall be to determine whether the youth committed the contested offenses; if the hearing is before the youth court judge without a jury, the judge shall make and record his findings on all issues. If the allegations of the petitions are not established at the hearing, the youth court shall dismiss the petition and discharge the youth from custody.

(3) An adjudicatory hearing shall be recorded verbatim by whatever means the court deems appropriate.

(4) The youth charged in a petition must be present at the hearing and if brought from detention to the hearing, shall not appear clothed in institutional clothing.

(5) In a hearing on a petition under this section, the general public shall be excluded and only such persons admitted as have a direct interest in the case; except that when a hearing in the court is held on a written petition charging the commission of a felony, persons with a legitimate interest in the proceeding, including representatives of public information media, shall not be excluded from the hearing.

(6) If the court finds on the basis of a valid admission by a youth of the allegations of the petition or if a youth is found to be a delinquent youth or a youth in need of supervision the court shall schedule a dispositional hearing under this act.

(7) When a jury trial is required in a case, it may be held before the regular trial panel. If the regular panel is not in attendance, the court may draw a jury from jury box No. 3.

Section 21. There is a new section to be numbered 10-1221, R.C.M. 1947, which reads as follows:

10-1221. **Dispositional hearing.** (1) As soon as practicable after a youth is found to be a delinquent youth or a youth in need of supervision, the court shall conduct a dispositional hearing.

(2) Before conducting the dispositional hearing, the court shall direct that a social summary or predisposition report be made in writing by a probation officer concerning the youth, his family, his environment, and other matters relevant to the need for care or rehabilitation or disposition of the case. The youth court may have the youth examined, and the results of the examination shall be made available to the court as part of the social summary or predisposition report. The court may order the examination of a parent or guardian who gives his consent, and whose ability to care for or supervise a youth is at issue before the court. The results of such examination shall be included in the social summary or predisposition report. The youth, his parents, guardian, or counsel shall have the right to subpoena all persons who have prepared any portion of the social summary or predisposition report and shall have the right to cross-examine said parties at the dispositional hearing.

(3) Defense counsel shall be furnished with a copy of the social sum-

mary or predisposition report and psychological report prior to the dispositional hearing.

(4) The dispositional hearing shall be conducted in the manner set forth in section 10-1220, subsections (3), (4), and (5). The court shall hear all evidence relevant to a proper disposition of the case best serving the interests of the youth and the public. Such evidence shall include, but not be limited to, the social summary and predisposition report provided for in subsection (2) of this section.

(5) If the court finds that it is in the best interest of the youth, the youth, his parents, or guardian may be temporarily excluded from the hearing during the taking of evidence on the issues of need for treatment and rehabilitation.

Section 22. There is a new section to be numbered 10-1222, R.C.M. 1947, which reads as follows:

**10-1222. Disposition of delinquent youth and youth in need of supervision.** (1) If a youth is found to be delinquent or in need of supervision the court may enter its judgment making the following disposition:

- (a) place the youth on probation;
- (b) place in a licensed foster home or a home approved by the court;
- (c) place the youth in a private agency responsible for the care and rehabilitation of such a youth, including, but not limited to, a district youth guidance home;
- (d) transfer legal custody to the department of institutions; provided, however, that in the case of a youth in need of supervision, such transfer of custody shall not authorize the department of institutions to place the youth in a detention facility and such custody shall not continue for a period of more than six (6) months without a subsequent court order after notice and hearing;
- (e) such further care and treatment or evaluation that the court deems beneficial to the youth, consistent with subsection (d) of this section.

(2) At any time after the youth has been taken into custody the court may, with the consent of the youth in the manner provided in section 10-1218(1), R.C.M. 1947, for consent by a youth to waiver of his constitutional rights, or after the youth has been adjudicated delinquent or in need of supervision:

- (a) order the youth to be evaluated for a period not to exceed forty-five (45) days of evaluation at a reception and evaluation center for youths; or
- (b) in the case of a delinquent youth sixteen (16) years or older who the court deems a suitable person for placement at a youth forest camp, notify the director of the department of institutions of the finding. The director of the department of institutions shall then designate to the court the youth detention facility to which the youth shall be delivered for evaluation. The court may then commit the youth to the department of institutions for a period not to exceed forty-five (45) days for the purpose

of evaluation as to the youth's suitability for placement, and order the youth delivered for evaluation to the youth facility designated by the director. If after the evaluation, the department of institutions reports to the court that such child is suitable for placement in a youth forest camp, and if there is space available at a camp, the court may then commit such child directly to the youth forest camp under the terms of commitment of this act. If the department of institutions reports and states the reasons to the court why the youth is not suitable for placement, the youth shall be returned to the court for such further disposition as the court may deem advisable under the provisions of this act. The costs of transporting the youth to the designated youth facility for evaluation and cost of returning the youth to the court shall be borne by the county of residence of the youth.

(3) No youth shall be committed or transferred to a penal institution or other facility used for the execution of sentence of adult persons convicted of crimes except as provided by subsection (2)(b) above.

(4) Any order of the court may be modified at any time.

(5) Whenever the court vests legal custody in an agency, institution or department, it must transmit with the dispositional judgment copies of a medical report, and such other clinical, predisposition or other reports and information pertinent to the care and treatment of the youth.

(6) The order of commitment to the department of institutions shall read as follows:

#### ORDER OF COMMITMENT

State of Montana, County of ....., ss:

In the district court for the .... judicial district.

On the .... day of ....., 19.., ....., a minor of this county, .... years of age, was brought before me charged with ....., Upon due proof I find that .... is a suitable person to be committed to the department of institutions.

It is ordered that .... be committed to the department of institutions until .....

The names, address and occupations of the parents are:

| Name  | Address | Occupation |
|-------|---------|------------|
| ..... | .....   | .....      |

The names and address of their nearest relatives are:

.....

Witness my hand this .... day of .... A.D. 19...

.....Judge

Section 23. There is a new section to be numbered 10-1223, R.C.M. 1947, which reads as follows:

10-1223. **Disqualification of judges.** The statutes of the state of Montana relating to disqualification of judges in civil proceedings shall apply to all proceedings under this act.

Section 24. There is a new section to be numbered 10-1224, R.C.M. 1947, which reads as follows:

10-1224. **Consent decree with petition.** (1) At any time after the filing of a petition alleging delinquency or need of supervision, and before the entry of a judgment, the court may, on motion of counsel for the youth, or on the court's own motion, suspend the proceedings and continue the youth under supervision under terms and conditions negotiated with probation services and agreed to by all necessary parties. The court's order continuing the child under supervision under this section shall be known as a "consent decree." The procedures used and dispositions permitted when this section shall conform to the procedure and disposition specified in section 10-1210, R.C.M. 1947, relating to consent adjustments without petition.

(2) If the youth or his counsel objects to a consent decree, the court shall proceed to findings, adjudication and disposition of the case.

(3) If, either prior to discharge by probation services, or expiration of the consent decree, a new petition alleging delinquency or need of supervision is filed against the youth, or if the youth fails to fulfill the expressed terms and conditions of the consent decree, the petition under which the youth was continued under supervision may be reinstated in the discretion of the county attorney in consultation with probation services. In the event of reinstatement, the proceeding on the petition shall be continued to conclusion, as if the consent decree had never been entered.

(4) A youth who is discharged by probation services or who completes a period under supervision without reinstatement of the original petition shall not again be proceeded against in any court for the same offense alleged in the petition, and the original petition shall be dismissed with prejudice. Nothing in this subsection precludes a civil suit against the youth for damages arising from his conduct.

(5) In all cases where the terms of the consent decree shall extend for a period in excess of six (6) months, the probation officer shall submit a report at the end of each six (6) month period which shall be reviewed by the court.

Section 25. There is a new section to be numbered 10-1225, R.C.M. 1947, which reads as follows:

10-1225. **Appeals.** (1) Any party other than the state may appeal from a judgment of the court to the supreme court in the manner provided by law. The appeal shall be heard by the supreme court upon the files, records, and transcript of the evidence of the juvenile court.

(2) The appeal to the supreme court does not stay the judgment appealed from, but the supreme court may order a stay upon application and hearing consistent with the provisions of this act if suitable provision is made for the care and custody of the youth. If the order appealed from grants the legal custody of the youth to, or withholds it from, one (1) or more of the parties to the appeal, the appeal shall be heard at the earliest practicable time.

Section 26. There is a new section to be numbered 10-1226, R.C.M. 1947, which reads as follows:

10-1226. **Court costs and expenses.** The following expenses shall be a charge upon the funds of the court or other appropriate agency when applicable, upon their certification by the court:

- (1) the costs of medical and other examinations and treatment of a youth ordered by the court;
- (2) reasonable compensation for services and related expenses for counsel appointed by the court for a party;
- (3) the expenses of service of summons, notices, subpoenas, traveling expenses of witnesses and other like expenses incurred in any proceeding under the Montana Youth Court Act as provided for by law;
- (4) reasonable compensation of a guardian ad litem appointed by the court; and
- (5) cost of transcripts and printing briefs on appeal.

Section 27. There is a new section to be numbered 10-1227, R.C.M. 1947, which reads as follows:

10-1227. **Use of private agencies by public agency.** When the legal custody of a youth is vested in a public agency under the provisions of this act the public agency may transfer physical custody of the youth to an appropriate private agency and may purchase care and treatment from the private agency if the private agency submits periodic reports to the public agency covering the care and treatment the youth is receiving and the youth's responses to that care and treatment. These reports shall be made as frequently as the public agency or the court deems necessary but not less often than once each six (6) months for each youth. The private agency shall also afford an opportunity for a representative of the public agency to examine or consult with the youth as frequently as the public agency deems necessary.

Section 28. There is a new section to be numbered 10-1228, R.C.M. 1947, which reads as follows:

10-1228. **Probation revocation — disposition.** A youth on probation incident to an adjudication that he is a delinquent youth or a youth in need of supervision and who violates a term of such probation may be proceeded against in a probation revocation proceeding. A proceeding to revoke probation shall be done by filing in the original proceeding a petition styled "petition to revoke probation." Petitions to revoke probation shall be screened, reviewed and prepared in the same manner and shall contain the same information as petitions alleging delinquency or need of supervision. Procedures of the Montana Youth Court Act regarding taking into custody and detention shall apply. The petition shall state the terms of probation alleged to have been violated and the factual basis for such allegations. The standard of proof in probation revocation proceedings is the same standard used in probation revocation of an adult and the hearing shall be before the youth court without a jury. In all other respects proceedings to revoke probation are governed by the proce-



dures, rights and duties applicable to proceedings on petitions alleging that the youth is delinquent or a youth in need of supervision. If a youth is found to have violated a term of his probation, the youth court may make any judgment of disposition that could have been made in the original case.

Section 29. There is a new section to be numbered 10-1229, R.C.M. 1947, which reads as follows:

**10-1229. Transfer to criminal court.** (1) After a petition has been filed alleging delinquency the court may, upon motion of the county attorney, before hearing the petition on its merits, transfer the matter of prosecution to the district court if:

(a) the youth charged was sixteen (16) years of age or more at the time of the conduct alleged to be unlawful and the unlawful act is one or more of the following:

- (i) criminal homicide as defined in section 94-5-101, R.C.M. 1947;
- (ii) arson as defined in section 94-6-104, R.C.M. 1947;
- (iii) aggravated assault as defined in section 94-5-202, R.C.M. 1947;
- (iv) robbery as defined in section 94-5-401, R.C.M. 1947;
- (v) burglary or aggravated burglary as defined in section 94-6-204, R.C.M. 1947;
- (vi) sexual intercourse without consent as defined in section 94-5-503, R.C.M. 1947;
- (vii) aggravated kidnapping as defined in section 94-5-303, R.C.M. 1947;
- (viii) possession of explosives as defined in section 94-6-105, R.C.M. 1947;
- (ix) criminal sale of dangerous drugs for profit as included in section 54-132, R.C.M. 1947.

(b) a hearing on whether the transfer should be made is held in conformity with the rules on a hearing on a petition alleging delinquency, except that the hearing will be to the youth court without a jury; and

(c) notice in writing of the time, place and purpose of the hearing is given to the youth, his counsel, and his parents, guardian or custodian at least ten (10) days before the hearing; and

(d) the court finds upon the hearing of all relevant evidence that there are reasonable grounds to believe that:

- (i) the youth committed the delinquent act alleged; and
- (ii) the seriousness of the offense and the protection of the community requires treatment of the youth beyond that afforded by juvenile facilities; and
- (iii) the alleged offense was committed in an aggressive, violent, or premeditated manner.

(2) In transferring the matter of prosecution to the district court the court shall also consider the following factors:

(a) the sophistication and maturity of the youth, determined by consideration of his home, environmental situation, and emotional attitude and pattern of living;

(b) the record and previous history of the youth, including previous contacts with the youth court, law enforcement agencies, youth courts in other jurisdictions, prior periods of probation and prior commitments to juvenile institutions;

(c) the prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the youth by the use of procedures, services and facilities currently available to the youth court.

(3) Upon transfer to district court, the judge shall make written findings of the reasons why the jurisdiction of the court was waived and the case transferred to district court.

(4) The transfer terminates the jurisdiction of the court over the youth with respect to the acts alleged in the petition. No youth shall be prosecuted in the district court for a criminal offense originally subject to the jurisdiction of the youth court unless the case has been transferred as provided in this section.

(5) Upon order of the court transferring the case to the district court, the county attorney shall file the information against the youth without unreasonable delay.

(6) If a youth is found guilty in district court of any of the offenses enumerated in subsection (2)(a) of this section and is sentenced to the state prison, his commitment shall be to the department of institutions which shall confine the youth in whatever institution it deems proper.

Section 30. There is a new section to be numbered 10-1230, R.C.M. 1947, which reads as follows:

10-1230. **Law enforcement records.** (1) All law enforcement records concerning a youth, except traffic records, shall not be open to public inspection nor their contents disclosed to the public unless so ordered by the court.

(2) Inspection of law enforcement records concerning a youth is permitted prior to the sealing of the records by:

(a) a youth court having the youth currently before it in any proceeding;

(b) the officers of agencies having legal custody of the youth and those responsible for his supervision after release;

(c) any other person, by order of the court, having a legitimate interest in the case or in the work of the law enforcement agency;

(d) Montana law enforcement officers when necessary for the discharge of their immediate duties;

- (e) a district court in which the youth is convicted of a criminal offense for the purpose of a presentence;
- (f) the county attorney; or
- (g) the youth, his parent, guardian or counsel.

Section 31. There is a new section to be numbered 10-1231, R.C.M. 1947, which reads as follows:

**10-1231. Youth court records.** (1) Youth court records, including social, medical and psychological records, reports of preliminary inquiries, predispositional studies and supervision records of probationers, are open to inspection prior to the sealing of the records only to the following:

- (a) the youth court and its professional staff;
- (b) representatives of any agency providing supervision and having legal custody of a youth;
- (c) any other person, by order of the court, having a legitimate interest in the case or in the work of the court;
- (d) any court and its probation and other professional staff, or the attorney for a convicted party, who had been a party to proceedings in the youth court when considering the sentence to be imposed upon such party;
- (e) the county attorney;
- (f) the youth who is the subject of the report or record, after he has been emancipated or reaches the age of majority.

(2) All or any part of records information secured from records listed in subsection (1) of this section, when presented to and used by the court in a proceeding under this act, shall also be made available to the counsel for the parties to the proceedings.

(3) All other court records, including docket, petitions, motions and other papers filed in a case, transcripts of testimony, findings, verdicts, orders and decrees shall be open to inspection by those persons and agencies listed in subsection (1) of this section, and the parties to the proceedings and their counsel.

(4) All information obtained in discharge of an official duty by any officer or other employee of the youth court shall be privileged and shall not be disclosed to anyone other than the judge and others entitled under this act to receive such information, unless otherwise ordered by the judge.

Section 32. There is a new section to be numbered 10-1232, R.C.M. 1947, which reads as follows:

**10-1232. Disposition of records.** (1) All court findings, orders, judgments and the legal and social files and records of the court, probation services and law enforcement agencies pertaining to a youth coming under this act shall be physically sealed when the youth reaches the age of eighteen (18) years.

(2) In those cases in which jurisdiction of the court or any agency is extended beyond the youth's eighteenth birthday the above records and files shall be physically sealed upon termination of the extended jurisdiction.

(3) Youth court records, probation officer's records, and all other reports of social and clinical studies shall not be opened to inspection except by consent of the court or the youth, upon petition to the youth court.

(4) Upon the physical sealing of the records pertaining to a youth pursuant to this section any agency or department that has in its possession copies of the records so sealed shall also seal or destroy such copies of records. Anyone violating the provisions of this subsection shall be subject to contempt of court.

(5) Nothing herein contained shall prohibit the destruction of such records with the consent of the youth court judge or county attorney after ten (10) years from the date of sealing.

(6) This section shall not apply to youth traffic records.

Section 33. There is a new section to be numbered 10-1233, R.C.M. 1947, which reads as follows:

**10-1233. Youth court judge.** (1) Each judicial district in the state shall have at least one (1) judge of the youth court. His duties shall be:

- (a) to appoint and supervise qualified personnel to staff the youth division probation departments within the judicial district;
- (b) to conduct hearings on youth court proceedings under this act;
- (c) to perform any other functions consistent with the legislative purpose of this act.

(2) In each multi-judge judicial district the judges shall, by court rule, designate one of their number to act as youth court judge in each county in the judicial district for a fixed period of time. Service as youth court judge may be rotated among the different judges of the judicial district and among the individual counties within the judicial district for given periods of time. Continuity of service of a given judge as youth court judge and continuity in the operation and policies of the youth court in the county having the largest population in the judicial district shall be the principal consideration of the rule.

If the judges in any multi-judge judicial district do not establish such court rule within sixty (60) days of the enactment of the Montana Youth Court Act, the Montana supreme court shall establish an appropriate rule for such judicial district.

Section 34. There is a new section to be numbered 10-1234, R.C.M. 1947, which reads as follows:

**10-1234. Probation officers — powers — duties — qualifications.** (1) The youth division judge of each judicial district shall appoint such necessary probation officers as are required to carry out the purpose and

intent of this act. He shall appoint such part-time probation officers as shall be required. The qualifications for part-time probation officers shall approximate those required for probation officers insofar as possible. A chief probation officer shall be appointed by the judge to supervise the youth division offices in the judicial district. The judge shall also insure that the youth division offices are staffed with necessary office personnel and that the offices are properly equipped to effectively carry out the purpose and intent of this act. No person while serving as a law enforcement officer shall be appointed or perform the duties of a full-time or part-time probation officer.

(2) Any person appointed as a chief probation officer must have the following qualifications:

(a) a master's degree in the behavioral sciences or;

(b) a bachelor's degree from an accredited college or university in the behavioral sciences, and at least one (1) year's experience in work of a nature related to the duties of a probation officer as set forth in subsection (4) of this section; or

(c) a bachelor's degree in any field and at least three (3) years' experience in work related to the duties of a probation officer as set forth in subsection (4) of this section.

(d) The judge may appoint any reputable person as a probation officer who has had experience in work of a nature related to the duties of a chief probation officer; provided, preference shall be given to persons with the qualifications set forth in subsection (2) above.

(4) A probation officer shall:

(a) perform the duties set out in section 10-1210;

(b) make predisposition studies and submit reports and recommendations to the court;

(c) supervise, assist and counsel youth placed on probation or under his supervision;

(d) perform any other functions designated by the court.

(5) A probation officer shall have no power to make arrests or to perform any other law enforcement functions in carrying out his duties except that a probation officer may take into custody any youth who violates either his probation or a lawful order of the court.

(6) A chief probation officer shall receive for his services a sum specified by the court upon appointment; however, the judge may employ him on a yearly salary, not to exceed eleven thousand dollars (\$11,000) or on a per diem basis at the rate of forty dollars (\$40) per day for the time actually and necessarily employed in performing the duties of the office. The salary of such officer shall be apportioned among and paid by each of the counties in which such officer is appointed to act, in proportion to the assessed valuation of such counties for the same year, except where such officer is appointed for one (1) county whereby such county shall pay the entire salary.

The judge having jurisdiction of juvenile matters may also appoint such additional persons giving preference to persons having the qualifications suggested for appointment as the chief probation officer to serve as deputy probation officers as the judge deems necessary; their salaries to be fixed by the judge at the time of appointment, provided that such salaries shall not exceed ninety percent (90%) of the salary of the chief probation officer.

For all necessary travel incident to his official duties in connection with the investigation, supervision, and transportation of youth, the probation officer shall, in addition to his office salary, be reimbursed for actual expenses incurred.

Section 35. There is a new section to be numbered 10-1235, R.C.M. 1947, which reads as follows:

**10-1235. Order of adjudication — non-criminal.** No commitment of any youth to any institution under this act shall be deemed commitment to a penal institution. No adjudication upon the status of any youth in the jurisdiction of the court shall operate to impose any of the civil disability imposed on a person by reason of conviction of a criminal offense, nor shall such adjudication be deemed a criminal conviction, nor shall any youth be charged with or convicted of any crime in any court except as provided in this act. Neither the disposition of a youth under this act, nor evidence given in youth court proceedings under this act, shall be admissible in evidence except as otherwise provided in this act.

Section 36. There is a new section to be numbered 10-1236, R.C.M. 1947, which reads as follows:

**10-1236. Foster homes.** (1) The youth court may establish procedures for finding, maintaining and administering temporary and permanent licensed foster homes or other homes approved by the court for youth within the provisions of this act.

(2) The licensed foster homes established under this section shall be funded at a rate consistent with other foster homes established for other purposes under law.

(3) All foster homes licensed by the social and rehabilitation services, established shall be financed by the department of social and rehabilitation services as set forth in section 71-210(b), R.C.M. 1947.

Section 37. Section 10-627, R.C.M. 1947, is renumbered 10-1237, and is amended to read as follows:

**"10-1237. Youth detention home.** In all counties the county commissioners may provide by purchase, lease, or otherwise, a place to be known as the youth *detention* home, which shall not be used for the confinement of adult persons charged with criminal offenses, where delinquent *youths and youth in need of supervision* may be detained until final disposition, which place shall be maintained by the county as in other like cases. The judge having jurisdiction may appoint *such personnel as required*, who shall have charge of said home and of the *youths* detained therein.

Such home shall be furnished in a comfortable manner, as nearly as may be as a family home. The compensation of such *personnel* shall be fixed by the court, and such compensation and the maintaining of such home shall be paid out of the county treasury."

Section 38. Section 10-615, R.C.M. 1947, is renumbered 10-1238, and is amended to read as follows:

**"10-1238. Support of youth committed to a custodial agency.** When a *youth under this act* is committed by the court to custody other than that of its parents, and no provision is otherwise made by law for the support of such *youth*, compensation for the care of such *youth*, when approved by order of the court, shall be a charge upon the county, or the appropriate division thereof. But the court may, after giving the parent a reasonable opportunity to be heard, adjudge and order that such parent shall pay in such manner as the court may direct, such sum as will cover, in whole or in part, the support of such *youth*, *provided, however that such sum shall not exceed the cost of reasonable care of a normal youth at home*, and if such parent shall willfully fail or refuse to pay such sum, he may be proceeded against as provided by law for cases of desertion or failure to provide subsistence, or said cost may be collected in a civil action against the parent or parents."

Section 39. Section 10-631, R.C.M. 1947, is renumbered 10-1239.

Section 40. Section 10-628, R.C.M. 1947, is renumbered 10-1240, and is amended to read as follows:

**"10-1240. Youth court committee.** In every county of the state the judge having jurisdiction may appoint a committee, willing to act without compensation, composed of not less than three (3) nor more than seven (7) reputable citizens, *including youth representatives*, which committee shall be designated as a *youth court committee*; this committee shall be subject to the call of the judge to meet and confer with him on all matters pertaining to the *youth* department of the court, *including the appointment of probation officers*, and shall act as a supervisory committee of *youth* detention homes."

Section 41. There is a new section to be numbered 10-1241, R.C.M. 1947, which reads as follows:

**10-1241. Publicity.** No publicity shall be given to the identity of an arrested youth or to any matter or proceeding in the youth court involving a youth proceeded against as, or found to be a delinquent youth or youth in need of supervision except as provided in section 10-1220(5), R.C.M. 1947.

Section 42. Section 10-1101, R.C.M. 1947, is renumbered 10-1242, and is amended to read as follows:

**"10-1242. Establishment of district youth guidance home program.** The legislative assembly, in recognition of the wide and varied needs of *delinquent youths and youths in need of supervision of this state and of the desirability of meeting these needs on a community level to the fullest extent possible, and in order to reduce the need for custodial care in existing state institutions, establishes by this act a district youth guid-*

*ance home program to provide facilities and services for the rehabilitation of delinquent youths and youths in need of supervision and establishes a program to provide such facilities and services through local nonprofit corporations and the department of institutions."*

Section 43. Section 10-1102, R.C.M. 1947, is renumbered 10-1243, and is amended to read as follows:

**"10-1243. Definitions. For purposes of this act:**

(a) *Delinquent youth. A youth as defined in section 10-1203(12).*

(b) *A youth in need of supervision. A youth as defined in section 10-1203(13).*

(c) *District youth guidance home. A district youth guidance home is a family-oriented residence established in a judicial district of the state of Montana as an alternative to existing state institutions, the function of which is to provide a home and guidance through adult supervision for delinquent youths and youths in need of supervision. "*

Section 44. Section 10-1103, R.C.M. 1947, is renumbered 10-1244.

Section 45. Section 10-1104, R.C.M. 1947, is renumbered 10-1245, and is amended to read as follows:

**"10-1245. Governmental aid to nonprofit organizations.** (1) The department of institutions shall be authorized to contract with nonprofit corporations or associations, to provide facilities and services for *delinquent youths and youths in need of supervision* in district youth guidance homes, and is authorized to expend such moneys as shall be appropriated or available therefor.

(2) Governmental units, including but not limited to counties, municipalities, school districts, or state institutions of higher learning are hereby authorized, at their own expense, to provide funds, materials, facilities and services for district youth guidance homes."

Section 46. Section 10-1105, R.C.M. 1947, is renumbered 10-1246, and is amended to read as follows:

**"10-1246. Authority of youth court judge to commit delinquent youths and youths in need of supervision.** A *youth court judge* is hereby authorized in his discretion to place a *delinquent youth or a youth in need of supervision* to said district youth guidance home for any period of time up to the child's twenty-first birthday subject to the approval of its sponsoring nonprofit corporation or association."

Section 47. Section 10-1106, R.C.M. 1947, is renumbered 10-1247, and is amended to read as follows:

**"10-1247. Petition by person under twenty-one (21) to be placed in district youth guidance home.** *Any person under the age of eighteen (18) years, or any person between the ages of eighteen (18) and twenty-one (21) years, who is still within the jurisdiction of the youth court may petition the youth court of a district in which a district youth guidance home has been established to be placed in a district youth guidance home for any period of time up to said person's twenty-first birthday."*



Section 48. Section 10-1107, R.C.M. 1947, is renumbered 10-1248, and is amended to read as follows:

**"10-1248. Continuing jurisdiction of youth court over youths.** The youth court placing a *delinquent youth or a youth in need of supervision* to a district youth guidance home shall retain continuing jurisdiction over said youth until said youth becomes twenty-one (21) years of age or is otherwise discharged by order of the court."

Section 49. Section 10-1108, R.C.M. 1947, is renumbered 10-1249, and is amended to read as follows:

**"10-1249. Per diem charge to financially able parents.** A youth court judge placing a *delinquent youth or a youth in need of supervision* in a district youth guidance home may, if the parent or parents of the youth are financially able, without undue hardship, require the parents or parent to pay to the district youth guidance home a per diem charge not to exceed the per diem charge established by the department of institutions for each youth placed in the Montana children's center."

Section 50. Section 10-1109, R.C.M. 1947, is renumbered 10-1250, and is amended to read as follows:

**"10-1250. Placement of youths by department of institutions.** The department of institutions is hereby authorized as part of its aftercare program to place a *delinquent youth or a youth in need of supervision* in a district youth guidance home subject to the approval of its sponsoring nonprofit corporation or association."

Section 51. Section 10-1110, R.C.M. 1947, is renumbered 10-1251.

Section 52. Section 10-1111, R.C.M. 1947, is renumbered 10-1252.

Section 53. Section 94-2-109, R.C.M. 1947, is amended to read as follows:

**"94-2-109. Responsibility.** A person who is in an intoxicated or drugged condition is criminally responsible for conduct unless such condition is involuntarily produced and deprives him of his capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of law. An intoxicated or drugged condition may be taken into consideration in determining the existence of a mental state which is an element of the offense."

Section 54. Sections 10-601, 10-602, 10-603, 10-604.1, 10-605.1, 10-606, 10-607, 10-608, 10-608.1, 10-610, 10-611, 10-611.1, 10-612, 10-613, 10-614, 10-616, 10-617, 10-621, 10-622, 10-623, 10-624, 10-625, 10-626, 10-629, 10-630 and 10-633 are repealed.

Approved March 28, 1974

## CHAPTER NO. 330

AN ACT TO AMEND SECTION 84-1840, R.C.M. 1947, PROVIDING FOR

DIRECT PAYMENT OF FUNDS COLLECTED PURSUANT TO THE  
GASOLINE LICENSE TAX LAWS TO THE CITIES, TOWNS AND  
COUNTIES OF THIS STATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 84-1840, R.C.M. 1947, is amended to read as follows:

"84-1840. **Disposition of funds.** All taxes, interest and penalties collected under this act shall be turned over promptly to the state treasurer and the state treasurer shall place the same in the earmarked revenue fund to the credit of the *department of highways except those funds hereinbelow allocated to cities, towns and counties, which funds shall be paid by the state treasurer directly to such cities, towns and counties.*

(1) Three million dollars (\$3,000,000) of the funds collected under this act shall be allocated each fiscal year to the counties and incorporated cities and towns in Montana for construction, reconstruction, maintenance and repair of rural roads, and city or town streets and alleys, as provided in subsections (a) and (b) hereof,

(a) One million two hundred thousand dollars (\$1,200,000) shall be divided among the various counties in the following manner:

(i) Forty per centum (40%) in the ratio that the rural road mileage in each county, exclusive of the federal-aid interstate system and the federal-aid primary system, bears to the total rural road mileage in the state, exclusive of the federal-aid interstate system and the federal-aid primary system.

(ii) Forty per centum (40%) in the ratio that the rural population in each county outside incorporated cities and towns bears to the total rural population in the state outside incorporated cities and towns.

(iii) Twenty per centum (20%) in the ratio that the land area of each county bears to the total land area of the state.

(b) One million eight hundred thousand dollars (\$1,800,000) shall be divided among the incorporated cities and towns in the following manner:

(i) Fifty per cent (50%) of the sum shall be divided in the ratio that the population within the corporate limits of the city or town bears to the total population within corporate limits of all the cities and towns in Montana.

(ii) Fifty per cent (50%) shall be divided in the ratio that the city or town street and alley mileage, exclusive of the federal-aid interstate system and the federal-aid primary system, within corporate limits bears to the total street and alley mileage, exclusive of the federal-aid interstate system and federal-aid primary system, within the corporate limits of all cities and towns in Montana.

(2) All funds hereby allocated to counties, cities and towns shall be used exclusively for the construction, reconstruction, maintenance and repair of rural roads, city or town streets and alleys, or for the share which such city, town or county might otherwise expend for proportionate matching of federal funds allocated for the construction of roads or streets which are part of the federal-aid primary or secondary highway system, or urban extensions thereto.

(3) Upon receipt of the allocation provided herein, the governing bodies of the recipient counties, cities and towns, shall inform the department of highways of the purposes for which the funds shall be expended so that the county commissioners, the governing body and the department of highways may coordinate the expenditure of public funds for road improvements.

(4) All funds hereby allocated to counties, cities and towns shall be disbursed to the lowest responsible bidder according to applicable bidding procedures followed in all cases where the contract for construction, reconstruction and maintenance or repair is in excess of \$4,000.

(5) For the purposes of this act where distribution of funds is made on a basis related to population, the population shall be determined by the last preceding official federal census.

(6) For the purposes of this act where determination of mileage is necessary for distribution of funds it shall be the responsibility of the cities, towns and counties to furnish to the department of highways and state treasurer a yearly certified statement indicating the total mileage within their respective areas applicable to this act. All mileage submitted shall be subject to review and approval by the department of highways.

(7) None of the funds authorized by this section shall be used for the purchase of capital equipment."

Approved March 28, 1974

## CHAPTER NO. 331

### AN ACT AMENDING SECTION 25-605, R.C.M. 1947, TO PROVIDE FOR INCREASED SALARIES FOR CERTAIN COUNTY ATTORNEYS.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 25-605, R.C.M. 1947, is amended to read as follows:

"25-605. **Salaries of certain county officers.** The salaries of county treasurers, clerk and recorder, clerk of the court, county attorneys, sheriffs, county superintendents of schools, and of county surveyors in counties where county surveyors now receive salaries as provided in section 16-3302, shall be based on the population and taxable valuation of the county in accordance with the following schedule:

| Population<br>of County | Salary<br>Col. A | Taxable Valuation<br>of County | Salary<br>Col. B |
|-------------------------|------------------|--------------------------------|------------------|
| Below 3,000             | ..\$3,520        | Below \$2,000,000              | \$3,520          |
| 3,000 to 3,999          | ..\$3,620        | \$2,000,000 to 2,999,999       | \$3,620          |
| 4,000 to 4,999          | ..\$3,700        | 3,000,000 to 3,999,999         | \$3,700          |
| 5,000 to 5,999          | ..\$3,780        | 4,000,000 to 4,999,999         | \$3,780          |
| 6,000 to 6,999          | ..\$3,880        | 5,000,000 to 5,999,999         | \$3,880          |
| 7,000 to 7,999          | ..\$4,130        | 6,000,000 to 6,999,999         | \$4,130          |
| 8,000 to 8,999          | ..\$4,200        | 7,000,000 to 7,999,999         | \$4,200          |
| 9,000 to 9,999          | ..\$4,300        | 8,000,000 to 9,999,999         | \$4,300          |
| 10,000 to 12,499        | ..\$4,370        | 10,000,000 to 11,999,999       | \$4,370          |
| 12,500 to 14,999        | ..\$4,460        | 12,000,000 to 13,999,999       | \$4,460          |
| 15,000 to 17,499        | ..\$4,550        | 14,000,000 to 15,999,999       | \$4,550          |
| 17,500 to 19,999        | ..\$4,630        | 16,000,000 to 17,999,999       | \$4,630          |
| 20,000 to 24,999        | ..\$4,720        | 18,000,000 to 19,999,999       | \$4,720          |
| 25,000 to 29,999        | ..\$4,800        | 20,000,000 to 22,499,999       | \$4,800          |

|                           |                                  |
|---------------------------|----------------------------------|
| 30,000 to 39,999..\$4,890 | 22,500,000 to 24,999,999 \$4,890 |
| 40,000 to 49,999..\$5,010 | 25,000,000 to 29,999,999 \$5,010 |
| 50,000 to 59,999..\$5,190 | 30,000,000 to 34,999,999 \$5,190 |
| 60,000 to 69,999..\$5,370 | 35,000,000 to 39,999,999 \$5,370 |
| 70,000 to 79,999..\$5,520 | 40,000,000 to 44,999,999 \$5,520 |
| 80,000 to 89,999..\$5,690 | 45,000,000 to 49,999,999 \$5,690 |
| 90,000 to 99,999..\$5,870 | 50,000,000 to 54,999,999 \$5,870 |
| 100,000 and over..\$6,050 | 55,000,000 to 59,999,999 \$6,050 |
|                           | 60,000,000 to 64,999,999 \$6,050 |
|                           | 65,000,000 to 69,999,999 \$6,050 |
|                           | 70,000,000 to 74,999,999 \$6,050 |
|                           | 75,000,000 to 79,999,999 \$6,050 |
|                           | 80,000,000 to 84,999,999 \$6,050 |
|                           | 85,000,000 to 89,999,999 \$6,050 |
|                           | 90,000,000 to 94,999,999 \$6,050 |
|                           | 95,000,000 to 99,999,999 \$6,050 |
|                           | 100,000 and over.....\$6,050     |

The total salary paid to county treasurers, clerk and recorder, clerk of the court, county attorneys, sheriffs, county superintendents of schools and county sheriffs, and county surveyors in counties where county surveyors receive salaries, as provided in section 16-3302, shall be the sum of the salary shown in column A based on population when added to the salary shown in column B based on taxable valuation; provided, however, that county superintendent of schools shall receive, in addition to the salary based upon the totals of columns A and B above, the sum of four hundred dollars (\$400) per year and county sheriffs *and county attorneys* shall receive, in addition to the salary based upon the totals of columns A and B above, the sum of one thousand two hundred dollars (\$1,200) per year. Notwithstanding the above, in each county with a population in excess of thirty thousand (30,000) the county attorney shall receive a salary of sixteen thousand dollars (\$16,000) per year."

Approved March 28, 1974

## CHAPTER NO. 332

AN ACT TO CONFORM CHARITABLE TRUSTS AND CORPORATIONS WHICH ARE PRIVATE FOUNDATIONS WITHIN THE MEANING OF THE INTERNAL REVENUE CODE WITH THE REQUIREMENTS OF SECTION 508(E) OF THE INTERNAL REVENUE CODE BY RESTRICTING CERTAIN ACTIVITIES; PROVIDING FOR EXCEPTIONS; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is a new section to be numbered 86-707, R.C.M. 1947, which reads as follows:

86-707. **Charitable trusts — federal tax laws.** (1) Notwithstanding any provision to the contrary in the governing instrument or under any other law of this state and except as otherwise provided by court decree entered after the effective date of this act, the trustee of a trust, whenever created, which is or is treated as a private foundation or a split-interest

trust as defined in sections 509 and 4947, respectively, of the Internal Revenue Code of 1954, as in effect on the effective date of this act, during the period it is, or is treated as, a private foundation or split-interest trust as so defined:

(a) shall not engage in any act of self-dealing as defined in section 4941(d) thereof;

(b) shall distribute the trust income for each taxable year at such time and in such manner as not to subject the trust to the tax on undistributed income imposed by section 4942 thereof;

(c) shall not, if section 4943 thereof is applicable, retain any excess business holdings as defined in subsection (c) of that section;

(d) shall not, if section 4944 thereof is applicable, make any investment in such manner as to subject the trust to tax under that section; and

(e) shall not make any taxable expenditure as defined in section 4945(d) thereof.

(2) The trustee of a trust, whenever created, which is, or is treated as, a private foundation or a split-interest trust as defined in sections 509 and 4947, respectively, of the Internal Revenue Code of 1954, as in effect on the effective date of this act, may amend the terms of the governing instrument to the extent necessary to bring the trust into conformity with the requirements for:

(a) termination of private foundation status in the manner described in section 507(b) thereof;

(b) exemption of the trust from the taxes imposed by sections 4941 to 4945, inclusive, thereof, including the addition of a power to invade principal to the extent necessary to meet the requirements of section 4942; or

(c) exclusion of the trust from private foundation status under section 509(a)(3) thereof, and for this latter purpose may release any power contained in the governing instrument, may reduce or limit the charitable organizations or classes of charitable organizations in whose favor a power to select may be exercised and may appoint new or additional trustees. If the trust is for the benefit of one or more named charitable organizations, the trustee shall first obtain the consent of those organizations before making any amendment under subparagraph(c).

Section 2. There is a new section to be numbered 15-2398, R.C.M. 1947, which reads as follows:

**15-2398. Nonprofit corporations — federal tax laws.** In the absence of an express provision to the contrary in its articles of incorporation, a corporation organized at any time under Title 15, chapter 23, R.C.M. 1947, the Montana Nonprofit Corporations Act, which is a private foundation, as defined in Section 509 of the Internal Revenue Code of 1954, as in effect on the effective date of this act during the period it is a private foundation:

(a) shall not engage in any act of self-dealing as defined in section 4941(d) thereof;

(b) shall distribute its income for each taxable year at such time and in such manner as not to become subject to the tax on undistributed income imposed by section 4942 thereof;

(c) shall not retain any excess business holdings as defined in section 4943(c) thereof;

(d) shall not make any investment in such manner as to subject it to tax under section 4944 thereof;

(e) shall not make any taxable expenditure as defined in section 4945(d) thereof.

Section 3. **Severability.** If any provision of this act or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Section 4. This act is effective upon passage and approval.

Approved March 28, 1974

### CHAPTER NO. 333

AN ACT AMENDING SECTIONS 41-817 AND 41-818, R.C.M. 1947, AUTHORIZING THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO PURCHASE SHELTERED EMPLOYMENT SERVICES AND/OR WORK ACTIVITY SERVICES FOR SEVERELY HANDICAPPED PERSONS; AUTHORIZING THE DEPARTMENT TO PROMULGATE RULES AND REGULATIONS UNDER THIS ACT; PROVIDING FOR THE EXPENDITURE OF FUNDS FOR THIS PURPOSE; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 41-817, R.C.M. 1947, is amended to read as follows:

"41-817. **Definitions.** (1) "*Severely handicapped person*" means any individual:

(a) *who has a physical or mental impairment which requires multiple services over an extended period of time and results from amputation, blindness, cancer, cerebral palsy, cystic fibrosis, deafness, heart disease, hemiplegia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia and other spinal cord conditions, renal failure and any other disability, specified by the department in regulations it shall prescribe; and/or*

(b) *who, because of lack of social competence, mobility, experience, skills, training, or other successful characteristics, is in need of sheltered employment or work activity services in a protective setting.*

(2) "Physical or mental disability" means a physical or mental condition which materially limits, contributes to limiting or, if not corrected, will probably result in limiting an individual's activities or functioning. The term includes behavioral disorders characterized by deviant social behavior or impaired ability to carry out normal relationships with family and community which may result from vocational, educational, cultural, social, environmental or other factors.

(3) "Vocational rehabilitation services" means goods or services provided handicapped persons to enable such persons to be fit for gainful occupation or to attain or maintain a maximum degree of self-support or

self-care and includes every type of goods and services for which federal funds are available for vocational rehabilitation purposes, including, but not limited to, the establishment, construction, development, operation and maintenance of workshops and rehabilitation facilities.

(4) "Self-care" means a reasonable degree of restoration from dependency upon others for personal needs and care and includes but is not limited to ability to live in own home, rather than requiring nursing home care and care for self rather than requiring attendant care.

(5) "Department" means the department of social and rehabilitation services.

(6) "*Sheltered workshop*" means a charitable organization or institution conducted not for profit, but for the purpose of carrying out a recognized program of rehabilitation for handicapped workers, and/or providing such individuals with remunerative employment or other occupational rehabilitating activity of an educational or therapeutic nature.

(7) "*Work activity center*" means a physically separated department of a workshop having an identifiable program, separate supervision and records, planned and designed exclusively to provide therapeutic activities for handicapped workers whose physical or mental impairment is so severe as to make their productive capacity inconsequential. Therapeutic activities include custodial activities (such as activities where the focus is on teaching the basic skills or living), and any purposeful activity so long as work or production is not the main purpose."

Section 2. Section 41-818, R.C.M. 1947, is amended to read as follows:

**"41-818. Purchase of services for severely handicapped persons—determination of eligibility—register of qualified organizations—rules and regulations.** (1) The department may purchase, *sheltered employment services from any sheltered workshop in Montana or work activity services from any work activity center within Montana for severely handicapped persons.* The performance of and payment for such services shall be subject to post-audit review by the state auditor.

(2) The department shall maintain a register of nonprofit organizations which it *and other appropriate state and federal agencies have* inspected and certified as meeting required standards and as qualifying to serve the needs of such severely handicapped or disadvantaged persons. Eligibility of organizations to receive the funds specified by this act shall be based upon standards and criteria promulgated by the department.

(3) The department is authorized to promulgate such rules and regulations as it may deem necessary or proper to carry out the provisions of this section."

Section 3. **Effective date.** This act is effective on its passage and approval.

Approved March 28, 1974

## CHAPTER NO. 334

AN ACT AMENDING SECTION 11-3861, R.C.M. 1947, TO REDEFINE

"SUBDIVISION" TO INCLUDE ONLY PARCELS OF LESS THAN 20 ACRES IN SIZE AND TO DEFINE OTHER TERMS; AMENDING SECTION 11-3862, R.C.M. 1947, TO REQUIRE THAT INSTRUMENTS CONVEYING LAND IDENTIFY THE LAND BY REFERENCE TO RECORDED CERTIFICATES OF SURVEY OR SUBDIVISION PLATS, TO PROHIBIT THE FILING OF NONCONFORMING INSTRUMENTS, TO REQUIRE THE SURVEYING OF IRREGULAR TRACTS OF LAND, AND TO EXEMPT CERTAIN DIVISIONS OF LAND FROM REGULATION; AMENDING SECTION 11-3863, R.C.M. 1947, TO BROADEN THE CATEGORY OF SUBDIVISIONS ELIGIBLE FOR SUMMARY REVIEW AND APPROVAL; AMENDING SECTION 11-3864, R.C.M. 1947, REGARDING DEDICATION OF LAND FOR PARKS AND OPEN SPACE; AMENDING SECTION 11-3865, R.C.M. 1947, TO PROVIDE FOR REVIEW OF TITLE TO LAND PROPOSED FOR SUBDIVISION; AMENDING SECTION 11-3867, R.C.M. 1947, TO MAKE FINAL PLAT REVIEW BY EXAMINING LAND SURVEYOR DISCRETIONARY WITH THE GOVERNING BODY; AND AMENDING SECTION 11-3866, R.C.M. 1947.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 11-3861, R.C.M. 1947, is amended to read as follows:

"11-3861. **Definitions.** As used in this act, unless the context or subject matter clearly requires otherwise, the following words or phrases shall have the following meanings:

(1) "Certificate of survey" means a drawing of a field survey prepared by a registered surveyor for the purpose of disclosing facts pertaining to boundary locations.

(2) "Dedication" means the deliberate appropriation of land by an owner for any general and public use, reserving to himself no rights which are incompatible with the full exercise and enjoyment of the public use to which the property has been devoted.

(2.1) "Division of land" means the segregation of one or more parcels of land from a larger tract held in single or undivided ownership by transferring, or contracting to transfer, title to or possession of a portion of the tract or properly filing a certificate of survey or subdivision plat establishing the identity of the segregated parcels pursuant to this act. Provided that where required by this act the land upon which an improvement is situated has been subdivided in compliance with this act, the sale, rent, lease or other conveyance of one or more parts of a building, structure, or other improvement situated on one or more parcels of land is not a division of land and is not subject to the terms of this act.

(3) "Examining land surveyor" means a registered land surveyor duly appointed by the governing body to review surveys and plats submitted for filing.

(4) "Governing body" means a board of county commissioners or the governing authority of any city or town organized pursuant to law.



(4.1) *"Irregularly shaped tract of land" means a parcel of land other than an aliquot part of the United States government survey section or a United States Government lot the boundaries or areas of which cannot be determined without a survey or trigonometric calculation.*

(5) "Planned unit development" means a land development project consisting of residential clusters, industrial parks, shopping centers, or office building parks, or any combination thereof which comprises a planned mixture of land uses built in a prearranged relationship to each other and having open space and community facilities in common ownership or use.

(6) "Plat" means a graphical representation of a subdivision showing the division of land into lots, parcels, blocks, streets, and alleys, and other divisions and dedications.

(7) "Preliminary plat" means a neat and scaled drawing of a proposed subdivision showing the layout of streets, alleys, lots, blocks, and other elements of a subdivision which furnish a basis for review by a governing body.

(8) "Final plat" means the final drawing of the subdivision and dedication required by this act to be prepared for filing for record with the county clerk and recorder and containing all elements and requirements set forth in this act and in regulations adopted pursuant thereto.

(9) "Registered land surveyor" means a person licensed in conformance with the Montana Professional Engineers' Registration Act (sections 66-2301 through 66-2347) to practice surveying in the state of Montana.

(10) "Registered professional engineer" means a person licensed in conformance with the Montana Professional Engineers' Registration Act (sections 66-2301 through 66-2347) to practice engineering in the state of Montana.

(11) "Subdivider" means any person who causes land to be subdivided or who proposes a subdivision of land.

(12) *"Subdivision" means a division of land, or land so divided, which creates one or more parcels containing less than twenty (20) acres, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed, and shall include any resubdivision; and shall further include any condominium or area, regardless of its size, which provides or will provide multiple space for recreational camping vehicles, or mobile homes. A subdivision shall comprise only those parcels less than twenty (20) acres which have been segregated from the original tract, and the plat thereof shall show all such parcels whether contiguous or not. Provided, however, condominiums constructed on land divided in compliance with this chapter are exempt from the provisions of this chapter.*

(13) *"Occasional sale" means one sale of a division of land within any twelve-month (12) period."*

Section 2. Section 11-3862, R.C.M. 1947, is amended to read as follows:

**"11-3862. Surveys required — exceptions — standards for monumentation.** (1) *All divisions of land for sale other than a subdivision after the effective date of this act into parcels which cannot be described as 1/32 or larger aliquot parts of a United States government section or a United States government lot must be surveyed by or under the supervision of a registered land surveyor.*

(2) Every subdivision of land after June 30, 1973, shall be surveyed and platted in conformance with this act by or under the supervision of a registered land surveyor. Subdivision plats shall be prepared and filed in accordance with this act and regulations adopted pursuant thereto. All division of sections into aliquot parts and retracement of lines must conform to United States bureau of land management instructions, and all public land survey corners shall be filed in accordance with the Corner Recordation Act of Montana (sections 67-2001 through 67-2019). Engineering plans, specifications, and reports required in connection with public improvements and other elements of the subdivision required by the governing body shall be prepared and filed by a registered engineer or a registered land surveyor as their respective licensing laws allow in accordance with this act and regulations adopted pursuant thereto.

(3) *The county clerk and recorder of any county shall not record any instrument which purports to transfer title to or possession of a parcel or tract of land which is required to be surveyed by this act unless the required certificate of survey or subdivision plat has been filed with the clerk and recorder and the instrument of transfer describes the parcel or tract by reference to the filed certificate or plat.*

(4) Instruments of transfer of land which is acquired for state highways may refer by parcel and project number to state highway plans which have been recorded in compliance with section 32-2413, and are exempted from the surveying and platting requirements of this act; provided, however, that if such parcels are not shown on highway plans of record, instruments of transfer of such parcels shall be accompanied by and refer to appropriate certificates of survey and plats when presented for recording.

(5) *The provisions of this act shall not apply to the division of state-owned land unless the division creates a second or subsequent parcel from a single tract for sale, rent or lease for residential purposes after July 1, 1974.*

(6) *Unless the method of disposition is adopted for the purpose of evading this act, the following divisions of land are not subdivisions under this act but are subject to the surveying requirements of this section for divisions of land not amounting to subdivisions.*

(a) *Divisions made for the purpose of relocating common boundary lines between adjoining properties.*

(b) *Divisions made for the purpose of a gift or sale to any member of the landowner's immediate family.*

(c) *Divisions made by sale or agreement to buy and sell where the parties to the transaction enter a covenant running with the land and revo-*

*cable only by mutual consent of the governing body and the property owner that the divided land will be used exclusively for agricultural purposes. Any change in use of the land for anything other than agricultural purposes subjects the division to the provisions of this chapter.*

*(d) A single division of a parcel when the transaction is an occasional sale.*

*(7) Subdivisions created by rent or lease are exempt from the surveying and filing requirements of this act but must be submitted for review and approved by the governing body before portions thereof may be rented or leased.*

*(8) Unless the method of disposition is adopted for the purpose of evading this act, the requirements of this act shall not apply to any division of land:*

*(a) which is created by order of any court of record in this state or by operation of law, or which, in the absence of agreement between the parties to the sale, could be created by an order of any court in this state pursuant to the law of eminent domain (sections 93-9901 through 93-9926);*

*(b) which is created by a lien, mortgage, or trust indenture;*

*(c) which creates an interest in oil, gas, minerals, or water which is now or hereafter severed from the surface ownership of real property;*

*(d) which creates cemetery lots;*

*(e) which is created by the reservation of a life estate;*

*(f) which is created by lease or rental for farming and agricultural purposes.*

*(9) The sale, rent, lease, or other conveyance of one or more parts of a building, structure, or other improvement situated on one or more parcels of land is not a division of land, as that term is defined in this act, and is not subject to the requirements of this act.*

*(10) The department of intergovernmental relations shall, in conformance with the Montana Administrative Procedure Act (sections 82-4201 through 82-4225), prescribe uniform standards for monumentation and for the form, accuracy, and descriptive content of records of survey.*

*(11) It shall be the responsibility of the governing body to require the replacement of all monuments removed in the course of construction."*

Section 3. Section 11-3863, R.C.M. 1947, is amended to read as follows:

**"11-3863. Enforcement by governmental subdivisions — adoption of regulations — public hearing.** (1) The governing body of every county, city, and town shall, before July 1, 1974, adopt and provide for the enforcement and administration of subdivision regulations reasonably providing for the orderly development of their jurisdictional areas; for the co-ordination of roads within subdivided land with other roads, both existing and planned; for the dedication of land for roadways and for public

utility easements; for the improvement of roads; for the provision of adequate open spaces for travel, light, air and recreation; for the provision of adequate transportation, water, drainage, and sanitary facilities; for the avoidance or minimization of congestion; and for the avoidance of subdivision which would involve unnecessary environmental degradation; and the avoidance of danger of injury to health, safety, or welfare by reason of natural hazard or the lack of water, drainage, access, transportation or other public services or would necessitate an excessive expenditure of public funds for the supply of such services.

Prior to adopting or amending subdivision regulations pursuant to this act, the governing body shall submit the proposed regulations or amendments to the division of planning and economic development of the department of intergovernmental relations for review.

Before the governing body adopts subdivision regulations pursuant to this section it shall hold a public hearing thereon and shall give public notice of its intent to adopt such regulations and of the public hearing by publication of notice of the time and place of the hearing in a newspaper of *general circulation* in the county not less than fifteen (15) nor more than thirty (30) days prior to the date of the hearing.

(2) Not later than December 31, 1973, the department of intergovernmental relations, through its division of planning, shall, in conformance with the Montana Administrative Procedure Act (sections 82-4201 through 82-4225), prescribe reasonable minimum requirements for subdivision regulations adopted pursuant to this act. The minimum requirements shall include detailed criteria for the content of the environmental assessment required by this act. The *department* shall provide for the review of preliminary plats by those agencies of state and local government and affected public utilities having a substantial interest in a proposed subdivision; provided, however, that such agency or utility review shall not delay the governing body's action on the plat beyond the time limit specified herein, and the failure of any agency to complete a review of a plat shall not be a basis for rejection of the plat by the governing body.

(3) In prescribing the minimum contents of the subdivision regulations, the department of intergovernmental relations, through its division of planning, shall require the submission by the subdivider to the governing body of an environmental assessment.

*(3.1) When a subdivision is proposed in an area for which a master plan has been adopted pursuant to sections 11-3801 through 11-3856 and the proposed subdivision will be in compliance with the plan or when the subdivision will contain fewer than ten (10) parcels and less than twenty (20) acres, a planning board established pursuant to sections 11-3801 through 11-3856 and having jurisdiction over the area involved may exempt the subdivider from the completion of all or any portion of the environmental assessment. When such an exemption is granted, the planning board shall prepare and certify a written statement of the reasons for granting the exemption. A copy of this statement shall accompany the preliminary plat of the subdivision when it is submitted for review. Where no properly established planning board having jurisdiction exists, the governing body may grant exemptions as specified in this paragraph.*

(4) *Where required the environmental assessment shall accompany the preliminary plat and shall include:*

(a) a description of every body or stream of surface water as may be affected by the proposed subdivision, together with available ground water information, and a description of the topography, vegetation and wildlife use within the area of the proposed subdivision;

(b) maps and tables showing soil types in the several parts of the proposed subdivision, and their suitability for any proposed developments in those several parts;

(c) a community impact report containing a statement of anticipated needs of the proposed subdivision for local services, including education and busing, roads and maintenance, water, sewage, and solid waste facilities, and fire and police protection;

(d) such additional relevant and reasonable information as may be required by the department through its division of planning.

(5) Local subdivision regulations shall include procedures for the summary review and approval of subdivision plats containing five (5) or fewer parcels *where proper access to all lots is provided*, where no land in the subdivision will be dedicated to public use *for parks or playgrounds* and which have been approved by the department of health and environmental sciences where such approval is required by sections 69-5001 through 69-5005; provided that reasonable local regulations may contain additional requirements for summary approval.

(6) Subdivision regulations may authorize the governing body to grant variances from the regulations when strict compliance will result in undue hardship and when it is not essential to the public welfare. Any variance granted pursuant to this subsection must be based on specific variance criteria contained in the subdivision regulations.

(7) Local regulations may provide that in lieu of the completion of the construction of any public improvements prior to the approval of a final plat, the governing body shall require a bond or other reasonable security, in an amount and with surety and conditions satisfactory to it, providing for and securing the construction and installation of such improvements within a period specified by the governing body and expressed in the bonds or other security.

(8) In the event that any governing body has not adopted subdivision regulations by July 1, 1974, which meet or exceed the prescribed minimum requirements, the department shall, through its division of planning, no later than January 1, 1975, promulgate reasonable regulations to be enforced by the governing body. If at any time thereafter the governing body adopts its own subdivision regulations, these shall supersede those promulgated by the department but shall be no less stringent."

Section 4. Section 11-3864, R.C.M. 1947, is amended to read as follows:

"11-3864. **Dedications of portions of subdivisions to the public — cash donations in lieu of dedications — waivers.** (1) *A plat of a*

*residential subdivision shall show that one-ninth (1/9) of the combined area of lots five (5) acres or less in size and one-twelfth (1/12) of the combined area of lots greater than five (5) acres in size, exclusive of all other dedications, is forever dedicated to the public for parks or playgrounds. No dedication may be required for the combined area of those lots in the subdivision which are larger than ten (10) acres exclusive of all other dedications. The governing body, in consultation with the planning board having jurisdiction, may determine suitable locations for such parks and playgrounds.*

(2) Where, because of size, topography, shape, location, or other circumstances, the dedication of land for parks or playgrounds is undesirable, the governing body may, for good cause shown, make an order to be endorsed and certified on the plat accepting a cash donation in lieu of the dedication of land and equal to the fair market value of the amount of land that would have been dedicated. For the purpose of this section, the fair market value is the value of the unsubdivided, unimproved land. Such cash donation shall be paid into the park fund to be used for the purchase of additional lands or for the initial development of parks and playgrounds.

(3) If the proposed plat provides for a planned unit development with land permanently set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside therein, the governing body may issue an order waiving land dedication and cash donation requirements.

(4) If a tract of land is being developed under single ownership as a part of an overall plan, and part of the tract has been subdivided and sufficient park lands have been dedicated to the public from the area that has been subdivided to meet the requirements of this section for the entire tract being developed, the governing body shall issue an order waiving the land dedication and cash donation requirements for the subsequently platted area.

(5) The local governing body may waive dedication and cash donation requirements where all of the parcels in a subdivision are five (5) acres or more in size and where the subdivider enters a covenant to run with the land and revocable only by *mutual* consent of the governing body and the property owner that the parcels in the subdivision will never be subdivided into parcels of less than five (5) acres and that all parcels in the subdivision will be used for single family dwellings.

(6) *The governing body may waive dedication and cash donation requirements when the subdivider agrees to create a property owners' association for the proposed subdivision and to deed to the association land to be held in perpetuity for use as parks or playgrounds. The area of land to be deeded to the association shall equal the amount that would otherwise have been dedicated to public use.*

(7) *The governing body may waive dedication and cash donation requirements for subdivision to be created by rent or lease where the subdivider agrees to develop parks or playgrounds within the subdivision for the common use of the residents of the subdivision. The area of land to*

*be reserved for this purpose shall equal the amount that would otherwise have been dedicated to the public."*

Section 5. Section 11-3865, R.C.M. 1947, is amended to read as follows:

**"11-3865. Required abstract or title insurance — certification by city or county attorney.** (1) *The subdivider shall submit with the final plat a certificate of a licensed title abstractor showing the names of the owners of record of the land to be subdivided and the names of lien holders or claimants of record against the land and the written consent to the subdivision by the owners of the land, if other than the subdivider, and any lien holders or claimants of record against the land.*

(2) *The governing body may provide for the review of the abstract or certificate of title of the land in question by the county attorney where the land lies in an unincorporated area or by the city or town attorney when the land lies within the limits of a city or town."*

Section 6. Section 11-3866, R.C.M. 1947, is amended to read as follows:

**"11-3866. Submission of subdivision plat to governing body — notice — hearing — approval — disapproval.** (1) Except where a plat is eligible for summary approval the subdivider shall present to the governing body, or the agent or agency designated thereby, the preliminary plat of the proposed subdivision for local review. When the proposed subdivision lies within the boundaries of an incorporated city or town, the preliminary plat shall be submitted to and approved by the city or town governing body. When the proposed subdivision is situated entirely in an unincorporated area the preliminary plat shall be submitted to and approved by the governing body of the county; however, if the proposed subdivision lies within one (1) mile of a third class city or town or within two (2) miles of a second class city or within three (3) miles of a first class city the county governing body shall submit the preliminary plat to the city or town governing body *or its designated agent* for review and comment. If the proposed subdivision lies partly within an incorporated city or town, the proposed plat thereof must be submitted to and approved by both the city or town and the county governing bodies. This section does not limit the authority of certain municipalities to regulate subdivisions beyond their corporate limits pursuant to section 11-3305.

(2) The governing body shall approve, conditionally approve, or reject the preliminary plat within sixty (60) days of its presentation *unless the subdivider consents to an extension of the review period*. The preliminary plat shall show all pertinent features of the proposed subdivision and all proposed improvements. The governing body or its designated agent or agency shall review the preliminary plat to determine whether it conforms to the local master plan if one has been adopted pursuant to sections 11-3801 through 11-3856 to the provisions of this act, and to rules and regulations prescribed or adopted pursuant to this act.

(3) The governing body or its authorized agent or agency shall hold a public hearing on the preliminary plat and shall consider all relevant evidence relating to the public health, safety and welfare, including the

environmental assessment, to determine whether the plat should be approved, conditionally approved, or disapproved by the governing body. Notice of such hearing shall be given by publication in a newspaper of *general circulation* in the county not less than fifteen (15) days prior to the date of the hearing. *The subdivider and each property owner of record immediately adjoining the land included in the plat shall also be notified of the hearing by registered mail not less than fifteen (15) days prior to the date of the hearing.* When a hearing is held by an agent or agency designated by the governing body, the agent or agency shall act in an advisory capacity and recommend to the governing body the approval, conditional approval, or disapproval of the plat. This recommendation must be submitted to the governing body in writing not later than ten (10) days after the public hearing. If the governing body rejects or conditionally approves the preliminary plat, it shall forward one (1) copy of the plat to the subdivider accompanied by a letter over the appropriate signature stating the reason for rejection or enumerating the conditions which must be met to assure approval of the final plat.

(4) Upon approving or conditionally approving a preliminary plat, the governing body shall *provide the subdivider with* a dated and signed statement of approval. This approval shall be in force for not more than one (1) calendar year; at the end of this period the governing body may, at the request of the subdivider, extend its approval for no more than one (1) calendar year."

Section 7. Section 11-3867, R.C.M. 1947, is amended to read as follows:

**"11-3867. Filing of subdivision plat with county recorder — review of final subdivision plats and certificates of survey by examining land surveyor.** (1) *The governing body may require that final subdivision plats and certificates of survey* be reviewed for errors and omissions in calculation or drafting by an examining land surveyor *before recording with the county clerk and recorder.* When the survey data shown on the plat *or certificate of survey* meet the conditions set forth by or pursuant to this act, the examining land surveyor shall so certify in a printed or stamped certificate on the plat *or certificate of survey*, such certificate shall be signed by him.

No land surveyor shall act as an examining land surveyor in regard to a plat *or certificate of survey* in which he has a financial or personal interest.

(2) The governing body shall examine every final subdivision plat and shall approve it when, and only when, it conforms to the conditions of approval set forth on the preliminary plat and to the terms of this act and regulations adopted pursuant thereto. The clerk and recorder of the county shall refuse to accept any plat for record that fails to have such approval in proper form.

(3) Every final subdivision plat must be filed for record with the county clerk and recorder *before title* to the subdivided land can be sold or transferred in any manner or offered for sale or transfer. If illegal transfers or offers of any manner are made, the county attorney shall



commence action to enjoin further sales, transfers, or offers of sale or transfer and compel compliance with all provisions of this act. The cost of such action shall be imposed against the person transferring or offering to transfer the property."

Section 8. Section 11-3870, R.C.M. 1947, is amended to read as follows:

"11-3870. **Vacation of plat — easements of utilities.** (1) Any plat prepared and recorded as herein provided may be vacated either in whole or in part as provided by sections 11-2801 and 11-2803, and upon such vacation the title to the streets and alleys of such vacated portions to the center thereof shall revert to the owners of the properties within the platted area adjacent to such vacated portions; provided however, that when any pole line, pipe line, or any other public or private facility that is located in a vacated street or alley at the time of the reversion of the title thereto, the owner of said public or private utility facility shall have an easement over the vacated land to continue the operation and maintenance of the public utility facility.

(2) All plats, *certificates of survey*, and other title records recorded *after June 30, 1973*, and prior to the effective date of this act in accordance with the law in force at the time of recording, *and all plats, certificates of survey, and other title records recorded prior to July 1, 1973*, and which have not been subsequently vacated are hereby validated, notwithstanding irregularities, and have the same legal status as plats recorded under the provisions of this act.

(3) The recording of any plat made in compliance with the provisions of this act shall serve to establish the identity of all lands shown on and being a part of such plat. Where lands are conveyed by reference to a plat, the plat itself or any copy of the plat properly certified by the county clerk and recorder as being a true copy thereof, shall be regarded as incorporated into the instrument of conveyance and shall be received in evidence in all courts of this state.

(4) *This act shall not be applicable to deeds, contracts, leases, or other conveyances executed prior to the effective date of this act. Any instrument affecting real property which was executed prior to July 1, 1973, shall be deemed to be valid notwithstanding any failure to comply with platting or subdividing requirements in effect prior to July 1, 1973, and shall have the same force and effect as instruments complying with such platting and subdividing requirements."*

Approved March 28, 1974

## CHAPTER NO. 335

AN ACT TO PROVIDE FOR CITIES OF THE FIRST AND SECOND CLASS AND FOR OTHER CITIES ELECTING TO COME WITHIN THE PROVISIONS HEREOF A STATE WIDE POLICE RESERVE FUND AND PROGRAM; TRANSFERRING AS TO SUCH CITIES TO

THE DEPARTMENT OF ADMINISTRATION POLICE RESERVE FUNDS AND THE ADMINISTRATION AND INVESTMENT THEREOF; PROVIDING FOR THE ABOLITION OF THE FUNCTIONS OF BOARDS OF TRUSTEES OF POLICE RESERVE FUNDS OF SUCH CITIES AND FOR THE TRANSFER OF THEIR FUNCTIONS TO THE DEPARTMENT OF ADMINISTRATION AND, AS TO QUASI-JUDICIAL FUNCTIONS, TO THE BOARD OF RETIREMENT; PROVIDING THE MEANS TO FUND THE RESERVE OFFICERS PROGRAM; PROVIDING FOR THE QUALIFICATION OF POLICE OFFICERS ELIGIBLE FOR THE RESERVE LIST AND THE PAYMENT THEREOF; PROVIDING FOR THE PAYMENT OF BENEFITS UPON DEATH OF A POLICE OFFICER; PROVIDING FOR THE EXEMPTION OF PAYMENTS FROM ATTACHMENT AND OTHER OPERATIONS OF LEGAL PROCESS; AMENDING SECTIONS 11-1814, 11-1823, 11-1825, 11-1826, AND 11-1836, R.C.M. 1947; AND REPEALING SECTIONS 11-1818, 11-1820 AND 11-1821, R.C.M. 1947; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is a new section to be numbered 11-1838, R.C.M. 1947, which reads as follows:

**11-1838. Fund for police reserve officers of cities of the first and second class.** It is the purpose of this act to provide for a state-wide fund for police reserve officers of cities of the first and second class in Montana, for the investment of such fund, for the payment of benefits to police reserve officers, and to provide for uniformity of programs and procedures for such police reserve officers. The act further proposes to permit cities in Montana other than those in the first and second class to come within the provisions of this act as hereinafter provided.

Section 2. There is a new section to be numbered 82A-222, R.C.M. 1947, which reads as follows:

**82A-222. Board of trustees abolished — functions transferred.** The boards of trustees of police reserve funds in cities of the first and second class, created under section 11-1828, R.C.M. 1947, and other sections of chapter 18, title 11, R.C.M. 1947, are hereby abolished, and their functions, except the quasi-judicial functions transferred to the board of retirement by section 3 [82A-223] of this act, are transferred to the department of administration. Those boards of trustees created and existing as of the effective date of this act within cities other than those of the first and second class under the provisions of section 11-1824, R.C.M. 1947, are abolished as of such time as such city shall elect to come within the provisions of the within act, and, at such time, the functions of such board of the electing city, except the quasi-judicial functions transferred to the board of retirement by section 3 [82A-223] of this act, are transferred to the department of administration. Notwithstanding the provisions of section 11-1824, R.C.M. 1947, any city other than one in the first and second class electing after the effective date of this act to create a police reserve fund, shall comply with the provisions of this act, and shall

not create a local board of trustees, and the department of administration shall have all functions with regard to such fund as otherwise a local board of trustees would have, other than the quasi-judicial functions, which shall be exercised by the board of retirement.

Section 3. There is a new section to be numbered 82A-223, R.C.M. 1947, which reads as follows:

**82A-223. Quasi-judicial functions transferred.** The quasi-judicial functions of:

(1) boards of trustees of police reserve funds of cities of the first and second class;

(2) boards of trustees of police reserve funds of cities other than those of the first and second class, presently having boards of trustees of police reserve funds pursuant to section 11-1824, R.C.M. 1947, and electing to come within the provisions of this act; and

(3) boards of trustees which would, but for this act, have been created hereafter by cities other than those of the first and second class under the provisions of section 11-1824, R.C.M. 1947, are transferred or shall originally exist, as the case may be, to or in the board of retirement created by section 82A-215, R.C.M. 1947, as amended.

Section 4. There is a new section to be numbered 11-1839, R.C.M. 1947, which reads as follows:

**11-1839. Definitions.** Unless the context requires a different meaning, reference in this act hereafter to "cities" shall include all cities of the first and second class, and all cities other than those of the first and second class electing to come under this act or hereafter creating a police reserve fund; all references to "boards of trustees" shall include the boards of trustees now existing, existing at the time of election to come within this act, or which would have existed but for this act by virtue of the creation of such police reserve fund, in such cities; reference to "police reserve fund" or "fund" shall include the police reserve funds of all such cities.

Section 5. There is a new section to be numbered 11-1840, R.C.M. 1947, which reads as follows:

**11-1840. Transfer of police reserve fund.** (1) As soon as practical after the effective date of this act, cities of the first and second class or the boards of trustees thereof shall cause the treasurer of such city to transmit to the department of administration all moneys in that city's fund and shall cause to be transferred to the department of administration title and physical possession of all bonds, warrants, certificates of deposit, or securities which are part of such fund.

(2) Cities other than those of the first and second class having a police reserve fund as of the effective date of this act, and who elect to come within the provisions of this act, shall as soon as practical after the effective date of such election transmit to the department of administration all moneys in that city's fund and shall cause to be transferred to the department of administration title and physical possession of all bonds, warrants, certificates of deposit, or securities which are part of such fund.

Section 6. Section 11-1823, R.C.M. 1947, is amended to read as follows:

**"11-1823. Fund for payment of officers on reserve lists — tax levy.** For the purpose of paying the salaries of policemen who have been placed upon the reserve list of cities *under this act*, the city or town council, or commissioners, *shall deposit in the fund monthly an amount equal to eleven percent (11%) of the total salaries for the preceding month paid to active police officers of that city, exclusive of overtime and payments in lieu of sick leave and annual leave. Cities having such funds, not cities of the first or second class, as of the effective date of this act, and not having elected to come within the provisions of this act, shall likewise deposit in the fund of that city monthly an amount equal to eleven percent (11%) of the total salaries, exclusive of overtime and payments in lieu of sick leave and annual leave, for the preceding month, paid to active police officers of that city. Payments made by cities covered by this act shall be made by the treasurer of that city to the department of administration. In case the demand against the city for its deposits in such fund shall be such that it cannot be met within the general taxing authority of that city, then and in such case an additional levy of not to exceed three (3) mills may be made until the general taxing authority be sufficient to meet the demand.*"

Section 7. Section 11-1825, R.C.M. 1947, is amended to read as follows:

**"11-1825. Salary deduction for payment of reserve officers.** The treasurer of any incorporated city which *has as of the effective date of this act or which hereafter may create a police reserve fund*, shall retain from the monthly salary of all police officers upon the active list, a sum equal to *six percent (6%) of the monthly compensation paid each officer for his services as such police officer, exclusive of overtime and payments made in lieu of sick leave and annual leave*, the said monthly deduction from the salaries of such police officers, shall be paid into the *police reserve fund in the department of administration, or to the city's police reserve fund, as the case may be* for the purpose of paying the salaries of police officers upon the reserve list."

Section 8. Section 11-1826, R.C.M. 1947, is amended to read as follows:

**"11-1826. Gifts and moneys to be applied to fund.** All moneys withheld from salaries of police officers for the violation of rules and regulations of such police departments, all bequests, gifts or emoluments, paid or given on account of any extraordinary service of any member of such police department, except when specifically allowed to be retained by such officer by the mayor, commissioners and chief of police, and all moneys derived from the provisions of this act, shall be placed in the *police reserve fund, and transmitted promptly to the department of administration or to the board of trustees, as the case may be.*"

Section 9. Section 11-1836, R.C.M. 1947, is amended to read as follows:

**"11-1836. Credit of payments to police reserve fund — annual**

**report of board.** Every city or town, having a police *reserve fund* established under the provisions of the Metropolitan Police Law, shall deposit said payment *with the department of administration or to the credit of the police reserve fund of such city or town, as the case may be.* The board of trustees of each police officer's reserve fund shall on or before the first day of April of each year report to the state auditor as to the financial condition of their fund. *Payments provided for in this section and the preceding two (2) sections (11-1834, 11-1835) are in addition to those provided for in section 11-1823."*

Section 10. There is a new section to be numbered 11-1841, R.C.M. 1947, which reads as follows:

**11-1841. Administration of funds — department of administration.** Except as may be provided to the contrary in this act, the department of administration shall administer, handle, deal with, invest, and treat with the funds deposited with it under this act in accordance with the statutes, and rules and regulations made thereunder, dealing with public employees' retirement system. The funds of all cities making deposits with the department of administration under this act may be comingled for administration and investment purposes, but separate accounts shall be maintained as to each such city.

Section 11. There is a new section to be numbered 11-1842, R.C.M. 1947, which reads as follows:

**11-1842. Police officers — status.** Each city shall provide to the department of administration at times to be specified by the department of administration, such information as to the hiring of any police officer by that city and as to the change of status of such police officer as the department of administration shall require. When a police officer is to be placed upon the reserve list, the department of administration shall so place him and shall notify the city involved of that action. An officer having an option to be placed upon the reserve list shall notify the department of administration of his exercise of that option, if he so exercises it, and the department of administration shall place him upon the reserve list if he is eligible. In cases of disability under section 14 [11-1844] of this act, the determination shall be made by the city involved as in that section prescribed, and, if the police officer is determined to be eligible for inclusion on the reserve list, the city involved shall so notify the department.

Section 12. Section 11-1814, R.C.M. 1947, is amended to read as follows:

**"11-1814. Qualifications of policemen.** The members of a police department of any city, at the time of their appointment under this act, shall not be less than twenty (20) years of age nor more than forty (40) years of age.

A police officer must be a citizen of the United States, and meet the minimum qualifying standards for employment promulgated by the board of crime control."

Section 13. There is a new section to be numbered 11-1843, R.C.M. 1947, which reads as follows:

11-1843. **Qualifications for police reserves.** The following persons are eligible for the police reserves of a city and shall become police reserves as herein stated:

(1) As to police officers, which term throughout includes "policemen," "active police," "patrolman," or other similar terms denoting law enforcement officers under the Metropolitan Police Law, who are, as of the effective date of this act, employed by any city as a police officer, when such officer has completed twenty (20) years or more in the aggregate, either as probationary officer, a regular officer of such police department, or as a special police officer of said police department, in any capacity of rank whatever, provided that such police officer serving in the United States military service in time of war or national emergency shall be given credit upon his police record for such service in the same manner as though on active police duty for such time.

(2) As to police officers who shall first be employed by a city as a police officer after the effective date of this act, when such officer has completed twenty (20) years or more in the aggregate, either as probationary officer, a regular officer of such police department, or as a special officer thereof, in any capacity or rank, and the same proviso as to military service set forth in subsection (1) hereof applies to such police officers, and has reached the age of fifty (50).

(3) As to police officers whether now employed or hereafter first employed, who shall reach the age of sixty-five (65) years while in active service, such officers shall pass from the active list to the reserve list.

(4) When a police officer shall receive injuries or disabilities while on duty, or in the active discharge of the duties of a police officer, and in the line of duty, which injuries or disabilities shall, in the opinion of the board of police commissioners or city council of the city or town, be of such character to impair his ability as an active police officer, or incapacitate him for the further discharge of his duties as such, he shall become a member of the police reserves of such city or town.

(5) A police officer eligible for the reserve list by reason of subsections (1) or (2) of this section, shall have the option to transfer, as of the time he becomes eligible, to the reserve list, or he may elect to serve an additional one (1) to ten (10) years as an active police officer, provided however, that he may not elect to serve past his sixty-fifth birthday.

Section 14. There is a new section to be numbered 11-1844, R.C.M. 1947, which reads as follows:

11-1844. **Payment of police reserves.** (1) Whenever any policeman or officer shall become transferred from the active list of police officers of any city to the reserve list of that city, he shall thereafter be paid in monthly payments from the funds in this act provided for, as follows:

(a) For a police officer eligible for the reserve list after twenty (20) years of service under subsection (1) of section 13 [11-1843] of this act, and who does not elect to serve any additional years as an active police officer; or for a police officer eligible for the reserve list after twenty (20) years of service under subsection (2) of section 13 [11-1843] of this act,

who has reached his fiftieth year, and who does not elect to serve any additional years as an active police officer; or a police officer who becomes eligible by reason of injury or disability under subsection (4) of section 13 [11-1843] of this act, before reaching twenty (20) years of service; or for a police officer placed upon the reserve list by reason of reaching his sixty-fifth birthday prior to reaching twenty (20) years of service: a sum equal to one-half ( $\frac{1}{2}$ ) the base salary, excluding overtime and payments in lieu of sick leave and annual leave he was receiving as an active officer computed on the highest salary received in any one month during the last year of active service.

(b) For a police officer eligible for the reserve list after twenty (20) years who elects to serve additional years, the payment provided in subsection (a) of subsection (1) of this section, to which shall be added an additional one percent (1%) of such sum per year of additional service, up to a maximum of sixty percent (60%) of the base salary, excluding overtime and payment in lieu of sick leave and annual leave, he was receiving as an active officer computed on the highest salary received in any one (1) month during the last year of active service. For the purposes of this act, a police officer whose eligibility depends upon subsection (2) of section 13 [11-1843] of this act, and who completes twenty (20) years of service before reaching the age of fifty (50) years, shall be deemed to have elected to serve additional years for each year between the completion of his twentieth year of service and his fiftieth birthday, and he shall be paid the additional one percent (1%) for each such year.

(c) A policeman who is placed upon the reserve list by reason of reaching his sixty-fifth birthday, but who was theretofore eligible at his option to be placed upon such reserve list under subsections (1) or (2) of section 13 [11-1843] of this act, but elected to serve additional years after such earlier eligibility shall be paid for such additional years over his original eligibility at the same rate as is provided in subsection (a) of subsection (1) of this section.

(d) A police officer placed on the reserve list by reason of injury or disability under subsection 4 of section 13 [11-1843] of this act, and who, at the time of such injury or disability was eligible at his option to be placed on the reserve list under subsections (1) or (2) of section 13 [11-1843] of this act, but had elected to serve additional years, and was then serving such additional years shall be paid for such additional years over his original eligibility at the same rate as is provided in subsection (a) of subsection (1) of this section.

(2) Upon the death of any police officer on the active list or reserve list of any city, his surviving spouse, if there be one, shall, as long as such spouse remains the surviving spouse, be paid from the police reserve fund, a sum equal to one-half ( $\frac{1}{2}$ ) the base salary, excluding overtime and payments in lieu of sick leave or annual leave he was receiving as an active officer computed on the highest salary received in any one (1) month during the last year of active service prior to the date of his demise or prior to the date he passed to the reserve list. If the officer leaves dependent minor child or children, then upon his death if he leaves no surviving spouse, or upon the death or remarriage of the surviving spouse, then his surviving dependent minor child or children, collectively if there

be more than one (1) dependent minor child surviving, shall be paid the same monthly payments as are herein provided to be paid to the surviving spouse, until the minor child or children reach the age of eighteen (18) years or shall have married. Payments to be made to such minor child or children shall be paid to the duly appointed, qualified and acting guardian of the child or children for the use of such minor or minors, until such minor shall have reached the age of eighteen (18) years or shall have married and in case there is more than one (1) minor child, upon each child reaching the age of eighteen (18) years the pro rata payments to that child shall cease and shall be made to the remaining minor child or children until the youngest child reaches the age of eighteen (18) years or is married.

Section 15. There is a new section to be numbered 11-1845, R.C.M. 1947, which reads as follows:

11-1845. **Protection of benefits from legal process.** The benefits provided in section 14 [11-1844] of this act and in section 11-1814, R.C.M. 1947, are not subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency or other process of law, and are unassignable.

Section 16. There is a new section to be numbered 11-1846, R.C.M. 1947, which reads as follows:

11-1846. **Cost-of-living increases.** (1) "Index" for purposes of this section shall mean, for any calendar year, that year's annual average consumer price index for urban wage earners and clerical workers, all items (1957-1959=100) compiled by the bureau of labor statistics, United States department of labor, or successor agency.

(2) Effective July 1, 1975, every service or disability retirement allowance then payable to a retired member or to his beneficiary shall be increased by a percentage equal to the lesser of one-half ( $\frac{1}{2}$ ) of the percentage increase in the index for 1974 from the index for 1970 or the index for 1974 from the index for the calendar year preceding the effective date of retirement of the member.

(3) Effective July 1, 1975, every survivorship annuity then payable to a member's beneficiary shall be increased by a percentage equal to the lesser of one-half ( $\frac{1}{2}$ ) of the percentage increase in the index for 1974 from the index for the calendar year 1970 or for the index for 1974 from the index for the calendar year preceding the date of death of the deceased member.

Section 17. There is a new section to be numbered 11-1847, R.C.M. 1947, which reads as follows:

11-1847. **Amounts paid to fund — returned when officer discontinued.** A police officer whose service with the city has been discontinued by other than death or placement upon the reserve list shall be entitled to the return to him of the amounts paid to the fund through deductions from his salary. If he has ten (10) years or more of service, the amount paid shall include regular interest on such amounts. If he has less than ten (10) years of service, he shall receive only the amount paid through such salary deductions, without interest.



Section 18. There is a new section to be numbered 11-1848, R.C.M. 1947, which reads as follows:

11-1848. **Forms.** The department of administration shall prepare such forms as it finds necessary for the cities to complete to provide all information necessary to administer this act, and the cities shall inform the department of administration of all data necessary to carry out the purpose and intent hereof.

Section 19. There is a new section to be numbered 11-1849, R.C.M. 1947, which reads as follows:

11-1849. **Exceptions.** Except where specific additional benefits are given under this act to police officers, their spouses or minor children, who are already receiving payments from the police reserve fund of any city, and to that extent only, this act does not affect police officers already on the reserve list, or spouses or minor children already receiving such payments, and, as to them, their rights and obligations shall be determined as if this act had not been passed.

Section 20. There is a new section to be numbered 11-1850, R.C.M. 1947, which reads as follows:

11-1850. **Election of other cities.** Cities other than those of the first and second class may elect to come within the provisions of this act by the due and proper passage of an ordinance stating the election and the consent of the city to be bound by the provisions hereof, and upon the enactment of such ordinance the provisions hereof shall attach to that city.

Section 21. Sections 11-1818, 11-1820, and 11-1821, R.C.M. 1947, are repealed.

Section 22. **Effective date.** This act is effective July 1, 1975.

Approved March 28, 1974

## CHAPTER NO. 336

AN ACT AMENDING SECTIONS 80-1602 AND 80-1603, R.C.M. 1947, PROVIDING THAT CAPITAL OUTLAY BE INCLUDED IN PER DIEM CHARGES ASSESSED AGAINST RESIDENTS, OR RESPONSIBLE PERSONS, OF CERTAIN STATE INSTITUTIONS AND THAT RESIDENTS, OR RESPONSIBLE PERSONS, BE ASSESSED FOR IDENTIFIABLE, DIRECT, PATIENT SERVICE EXPENSES.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 80-1602, R.C.M. 1947, is amended to read as follows:

"80-1602. **Definition of terms.** As used in this chapter, *unless the context requires otherwise:*

(1) "Ancillary charge" means identifiable, direct, patient service expenses including, but not limited to, operating room, anesthesia, x-ray, laboratory, blood bank, oxygen therapy, physical therapy, medical supply, drug, and specialized medical equipment, expenses.

(2) "Full-time equivalent resident load" means the total daily resident count for the fiscal year divided by the number of days in the year.

(3) "Per diem" means the gross daily cost of operating an institution, excluding the cost of educational programs and ancillary charges, divided by the full-time equivalent resident load. The per diem may be computed separately for distinctively different programs at multipurpose institutions.

(4) "Resident" means any person who is receiving care from, or who is a resident of, an institution listed in section 80-1601.

(5) "Responsible person" means a person responsible for the support and maintenance of a resident."

Section 2. Section 80-1603, R.C.M. 1947, is amended to read as follows:

**"80-1603. Monthly assessment of charges — annual computation of rate — investigation — claim of state — review — deposit of receipts.** (1) The department shall assess monthly against each resident or responsible person, the full per diem charge, a proportionate share of the per diem charge, or no per diem charge, *plus full ancillary charge, a proportionate share of the ancillary charge, or no ancillary charge*, based upon financial information given to the department during its investigation. The per diem shall be computed on July 1 of each year by the director of institutions.

(2) *An assessment made by the department under this section shall be based on the resident's or responsible person's ability to pay. The department shall not make an assessment which would place an undue financial burden on the resident or the responsible person.*

(3) For the purpose of such investigations, every agency and department of the state is required to render all reasonable assistance to the department of institutions in obtaining all information necessary for the proper implementation of the purposes of such an investigation. The director and any representative of the department duly authorized by the director, shall have the power to administer oaths, take testimony, subpoena and compel the attendance of witnesses and the production of books, papers, records and documents deemed material appurtenant in connection with the duty of securing payments for support as provided by this act. Any person failing to obey such subpoena, upon petition of the director or representative of the department, to any judge of the district court of the state of Montana, may be ordered by the judge to appear and show cause for his disobedience of the subpoena. The judge, after hearing, may order that the subpoena be obeyed, or if it is made to appear to the judge that the subpoena was for any reason inappropriately issued, may dismiss the petition. Any person who fails to obey the subpoena when ordered to do so by the judge may be punished as for contempt of court on application of the district court by the director or his representative.

(4) The state of Montana shall have a claim against the estate of any patient and against the estate of any responsible person, for any amount due and owing to the state of Montana at the date of death of such resident or such person. Such claim against the estate of any responsible person shall not have priority against such estate for the amount necessary to rear and educate surviving children of the responsible person.

(5) The attorney general shall collect any claim which the state may have hereunder against such estate. No such claim shall be enforced against any real estate while it is occupied as a home by the surviving spouse or the resident or responsible person.

(6) If a resident or responsible person disagrees with the determination of the department as to the ability of such resident or responsible person to pay all or any part of the per diem *or ancillary charge*, an appeal may be filed within thirty (30) days of such determination with the state board of institutions. If such resident thereafter disagrees with the determination of the appeal by the state board of institutions, an appeal may be filed and taken to any court of record in Montana having jurisdiction of the resident or responsible person liable for such payment.

(7) The department may, at any time, review and change any determination for per diem *or ancillary charge* payments. In any case, however, no resident of an institution shall be released by reason of the nonpayment of the per diem *or the ancillary charge*, if in the judgment of the superintendent of the institution at which he is a resident, such release is medically inadvisable.

(8) All per diem payments received by the department shall be deposited in the state treasury to the credit of the general fund."

Approved March 28, 1974

## CHAPTER NO. 337

AN ACT AMENDING SECTIONS 52-402, 52-403 AND 52-404, R.C.M. 1947, TO PERMIT THE USE OF TRUST INDENTURES FOR AREAS OF REAL ESTATE OF NOT MORE THAN FIFTEEN (15) ACRES.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 52-402, R.C.M. 1947, is amended to read as follows:

"52-402. **Declaration of policy.** Because the financing of homes and business expansion is essential to the development of the state of Montana, and because such financing, usually involving areas of real estate of not more than *fifteen (15)* acres, has been restricted by the laws relating to mortgages of real property, and because more such financing of homes and business expansion is available if the parties can use security instruments and procedures not subject to all the provisions of the mortgage laws, it is hereby declared to be the public policy of the state of Montana

to permit the use of trust indentures for estates in real property of not more than *fifteen (15)* acres as hereinafter provided."

Section 2. Section 52-403, R.C.M. 1947, is amended to read as follows:

"52-403. **Definitions.** As used in this act, unless the context requires otherwise:

(1) "Beneficiary" means the person named or otherwise designated in a trust indenture as the person for whose benefit a trust indenture is given, or his successor in interest, and who shall not be the trustee.

(2) "Grantor" means the person conveying real property by a trust indenture as security for the performance of an obligation.

(3) "Trust indenture" means an indenture executed in conformity with this act and conveying real property to a trustee in trust to secure the performance of an obligation of the grantor or other person named in the indenture to a beneficiary.

(4) "Trustee" means a person to whom the legal title to real property is conveyed by a trust indenture, or his successor in interest.

(5) "*Fifteen (15) acres*" means *fifteen (15)* acres of land. Where the trust indenture states that the real property involved does not exceed *fifteen (15)* acres, such statement shall be binding upon all parties and conclusive as to compliance with the provisions of this act relative to the power to make a transfer, trust, and power of sale."

Section 3. Section 52-404, R.C.M. 1947, is amended to read as follows:

"52-404. **Authorization of trust indentures.** Transfers in trust of any interest in real property of an area not exceeding *fifteen (15)* acres may be made to secure the performance of an obligation of a grantor, or any other person named in the indenture, to a beneficiary; provided that it shall be unlawful to substitute a trust indenture for any mortgage in existence on the effective date of this act. Where any transfer in trust of any interest in real property is hereafter made to secure the performance of such an obligation, a power of sale is hereby conferred upon the trustee to be exercised after a breach of the obligation for which such transfer is security; and a trust indenture executed in conformity with this act may be foreclosed by advertisement and sale in the manner hereinafter provided, or, at the option of the beneficiary, by judicial procedure as provided by law for the foreclosure of mortgages on real property. The power of sale may be exercised by the trustee without express provision therefor in the trust indenture."

Approved March 28, 1974

## CHAPTER NO. 338

AN ACT AMENDING SECTION 80-2402, R.C.M. 1947, TO PROVIDE THAT THE SUPERINTENDENT OF THE WARM SPRINGS STATE HOSPITAL MAY BE A TRAINED AND EXPERIENCED HOSPITAL

ADMINISTRATOR OR A LICENSED PHYSICIAN; AND PROVIDING  
AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 80-2402, R.C.M. 1947, is amended to read as follows:

**"80-2402. Superintendent is supervisor of division — qualifications of superintendent.** The superintendent of the Warm Springs state hospital is the supervisor of the division of mental hygiene. The superintendent shall be a licensed physician who has fulfilled the residency requirements of the American Board of Psychiatry and Neurology in the speciality of psychiatry *or a hospital administrator with a master's degree and a minimum of three (3) years' full-time experience in hospital administration. The qualifications of the superintendent serving on the effective date of this act shall be considered sufficient to meet the requirements of this section.*"

Section 2. This act is effective on its passage and approval.

Approved March 28, 1974

## CHAPTER NO. 339

AN ACT TO AMEND SECTION 70-101, R.C.M. 1947, TO PROVIDE FOR A FIVE (5) MEMBER ELECTED PUBLIC SERVICE COMMISSION FROM FIVE (5) DISTRICTS APPORTIONED ON THE BASIS OF POPULATION; AND REPEALING SECTIONS 70-102 AND 72-101, R.C.M. 1947; AND PROVIDING FOR AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 70-101, R.C.M. 1947, is amended to read as follows:

**"70-101. Creation of public service commission.** A public service commission is hereby created, whose duty it shall be to supervise and regulate the operations of the public utilities hereinafter named, such supervision and regulation to be in conformity with this act. *The commission shall consist of five (5) members who shall be qualified electors of the district from which they are elected with each such member elected from a separate district of the state. At the next general election, there shall be elected five (5) commissioners for said commission except as hereinafter provided. Any commissioner whose term has not expired on the effective date of this act shall continue in office until the end of his term. Of the commissioners elected at the first election under this act, three (3) shall serve for a term of two (2) years, and two (2) for a term of four (4) years. At their first meeting the commissioners shall determine by lot which of them shall serve the terms less than four (4) years. Every term thereafter*

*shall be for a period of four (4) years commencing from the expiration of the first term. Said commissioners when elected will qualify at the time and in the manner provided by law for other state officers, and shall take office on the first Monday of January, next after their election. Each of said members of said board so elected shall serve until his successor is elected and qualified. A chairman shall be selected by the commission from its membership at the first meeting of each year after a general election.*

*Any vacancy occurring in the board shall be filled by appointment by the governor, and such appointee shall hold office until the next general election, and until his successor is elected and qualified. At the biennial election following the occurrence of any vacancy in the board, there shall be elected one (1) member to fill out the unexpired term for which such vacancy exists."*

Section 2. There is a new section to be numbered 70-101.1, R.C.M. 1947, which reads as follows:

**70-101.1. Public service commission districts.** In this state there are five (5) public service commission districts, with one (1) commissioner elected from each district distributed as follows:

First district: Blaine, Chouteau, Daniels, Dawson, Fergus, Garfield, Glacier, Golden Valley, Hill, Liberty, McCone, Musselshell, Petroleum, Phillips, Pondera, Prairie, Richland, Roosevelt, Sheridan, Toole, Valley, and Wibaux counties.

Second district: Big Horn, Carbon, Carter, Custer, Fallon, Powder River, Rosebud, Stillwater, Sweetgrass, Treasure, and Yellowstone counties.

Third district: Broadwater, Cascade, Jefferson, Judith Basin, Lewis and Clark, Meagher, Teton, and Wheatland counties.

Fourth district: Beaverhead, Deer Lodge, Gallatin, Granite, Madison, Park, Powell, Ravalli, and Silver Bow counties.

Fifth district: Flathead, Lake, Lincoln, Mineral, Missoula, and Sanders counties.

Section 3. Sections 70-102 and 72-101, R.C.M. 1947, are repealed.

Section 4. **Transition — incumbent commissioners — election.** This act shall not affect the current terms of commissioners. The incumbent commissioner whose present term of office extends beyond January 1, 1975, shall, within fifteen (15) days after the effective date of this act, designate the district he will serve by written declaration filed with the secretary of state and he shall serve as commissioner from such designated district to the expiration of such term. A failure by such incumbent commissioner to so designate his district shall subject such commission office to be open to election. The other two incumbent commissioners shall continue to serve to the expiration of such terms without designation of district, provided however, that there shall be elected in the primary and general elections of 1974, four (4) commissioners from the four (4) commission districts open for election.

Section 5. This act shall be effective upon its passage and approval.

Approved March 28, 1974

## CHAPTER NO. 340

AN ACT TO AMEND SECTION 4-403, R.C.M. 1947, RELATING TO THE

NUMBER OF RETAIL LIQUOR LICENSES AUTHORIZED TO BE  
ISSUED; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 4-403, R.C.M. 1947, is amended to read as follows:

**"4-403. Issuance of retail liquor licenses — limit on number of licenses — retail wine licenses — lapse and cancellation.** (1) Except as otherwise provided by law, a license to sell liquor at retail in accordance with the provisions of this act and the regulations of the Montana liquor control board, may be issued to any person who shall be approved by a majority of the board as a fit and proper person to sell liquor; provided, that the number of retail liquor licenses which the board may issue shall be determined as follows:

(a) The number of retail liquor licenses that the board may issue for premises situated within incorporated cities and incorporated towns and within a distance of five (5) miles from the corporate limits of such cities and towns shall be determined on the basis of population as shown by the most recent official United States census authorized by Congress, to wit: In incorporated towns of five hundred (500) inhabitants or less and within a distance of five (5) miles from the corporate limits of such towns, not more than two (2) retail liquor licenses; in incorporated cities or incorporated towns of more than five hundred (500) inhabitants and not over three thousand (3000) inhabitants and within a distance of five (5) miles from the corporate limits of such cities and towns, three (3) retail liquor licenses for the first one thousand (1000) inhabitants and one (1) retail liquor license for each additional one thousand (1000) inhabitants; in incorporated cities of over three thousand (3000) inhabitants and within a distance of five (5) miles from the corporate limits thereof, five (5) retail liquor licenses for the first three thousand (3000) inhabitants and one (1) retail liquor license for each additional one thousand five hundred (1500) inhabitants. The number of the inhabitants in such cities and towns, *and in addition* the number of inhabitants residing within a distance of five (5) miles from the corporate limits thereof, shall govern the number of retail liquor licenses that may be issued for use within such cities and towns and within a distance of five (5) miles from the corporate limits thereof; provided, however, that where two (2) or more incorporated municipalities are situated within a distance of five (5) miles from each other, the total number of retail liquor licenses that may be issued for use in both of such municipalities and within a distance of five (5) miles from their respective corporate limits, shall be determined on the basis of the combined population of both of such municipalities and shall not exceed the foregoing limitations. The said distance of five (5) miles from the corporate limits of any incorporated city or incorporated town shall be measured in a straight line from the nearest entrance of the premises proposed for licensing to the nearest corporate boundary of such city or town. Retail liquor licenses of issue on the date of the passage and approval of this act and which are in excess of the foregoing limitations shall be renewable, but no new licenses shall be issued in violation of such limitations; provided that such limitations shall not prevent the issu-

ance of a nontransferable and nonassignable (as to ownership only) retail liquor license to any post of a nationally chartered veterans' organization or any lodge of a recognized national fraternal organization, if such veterans' or fraternal organization has been in existence for a period of five (5) years or more prior to January 1, 1949. No incorporated city or incorporated town may by ordinance restrict the number of licenses that the board may issue; provided that no retail license may be issued by the board for any premises situated within any zone of a city or town wherein the sale of liquor is prohibited by ordinance, a certified copy of which has been filed with the board. The board shall have discretion to deny the issuance of a retail license if it shall determine that the premises proposed for licensing are off regular police beats and cannot be properly policed by local authorities.

(b) The number of retail liquor licenses that the board may issue for use at premises situated outside of any incorporated city or incorporated town and outside of the area within a distance of five (5) miles from the corporate limits thereof, shall be not more than one (1) license for each seven hundred fifty (750) population of the county, after excluding the population of incorporated cities and incorporated towns in such county *and the population residing within a distance of five (5) miles from the corporate limits thereof.*

(2) From and after February 1, 1949, any retail license issued pursuant to this act not actually used in a going establishment for a period of ninety (90) days, shall automatically lapse. Upon determining the fact of nonuser for such period the board shall cancel such license of record and no portion of the fee paid therefor shall be refundable. The provisions of this subsection shall not apply to the license of any licensee whose premises are operated on a seasonal basis in connection with a bona fide dude ranch, park hotel, tourist facility or like business, provided such licensee has secured written authority from the board to close his licensed premises for a specified period of greater than ninety (90) days' duration, and providing further that should the liquor control board determine that such lapse was reasonably beyond the control of the licensee, then the lapse provision set out above shall not apply.

(3) Resort licenses. It is the intent and purpose of this act to encourage the growth of quality recreational resort facilities in undeveloped areas of the state and to provide for the orderly growth of existing recreational sites by the establishment of resort areas within which retail liquor licenses may be issued by the board under the terms and as more particularly prescribed below. In addition to the licenses as otherwise set forth in this act, the board may issue resort retail liquor licenses in a resort area.

For the purposes of this section, a resort area is defined as a recreational facility meeting the qualifications determined by the board as hereinafter provided.

The board shall determine that the area for which licenses are to be issued is a resort area, such determination to be made under and pursuant to rules and regulations to be promulgated within one hundred eighty (180) days after the passage and approval of this act. In addition to the



other requirements of this act, a resort area for the purposes of qualification for the issuance of resort retail liquor license must have a current actual valuation of resort or recreational facilities, including land and improvements thereon, of not less than five hundred thousand dollars (\$500,000), at least half of which valuation must be for a structure or structures within the resort area, and must be under the sole ownership or control of one person or entity at the time of the filing of the resort area plat referred to in the next paragraph. The word control shall mean lands held under lease, option, or permit. Before first adopting such rules and regulations in regard to resort liquor licenses, the board shall publish a notice of the hearing to be held on said rules and regulations in a regularly published newspaper in the cities of Billings, Bozeman, Butte, Great Falls, Helena, Miles City, Kalispell and Missoula, Montana, said publication to be published in said newspapers at least once a week for four consecutive weeks, the last of said publications being at least ten (10) but not more than thirty (30) days prior to the date set for said hearing, which shall be held in Helena, Montana, at a time and place designated by the board.

The resort area must be determined by the resort developer or landowner by a plat setting forth the resort boundaries designating the ownership of the lands within the resort area which plat must be verified by the resort developer or landowner, and filed with the board prior to the filing of any applications by individuals for licenses within the resort area. Such plat must show the location and general design of the buildings, and other improvements to be built in said area in which resort retail liquor licenses are to, or may, be located. A master plan for the development of the said area may be filed by the resort developer in satisfaction of this section.

Upon such filing the board shall forthwith schedule a public hearing to be held in Helena, Montana, to determine whether the facility proposed by the resort developer or landowner is a resort area within the meaning of the rules and regulations of the board. At least thirty (30) days prior to the date of the hearing, the board shall publish notice thereof with a description of the location of the proposed resort area in a newspaper published in the county or counties in which the resort is located, once a week for four (4) consecutive weeks. Each resort developer or landowner shall, at the time of filing his application, pay to the board an amount sufficient to cover the costs of said publication. Persons may present statements to the board at the hearing in person or in writing in opposition or support of the plat. Within thirty (30) days of the hearing the board shall accept or reject the plat. If rejected the board must state its reasons and set forth the conditions, if any, under which the plat will be accepted and the decision of the board may be reviewed pursuant to the review procedure set forth in section 4-425 herein.

Once filed with the board, the boundaries of a resort may not be changed without full hearing as above provided and the prior approval of the board, which approval shall be according to public convenience and necessity.

When the board has accepted a plat and a given resort area has been determined, applications may then be filed with the board by persons for

the issuance of resort retail liquor licenses within the said resort area. Each applicant must submit plans showing the location, appearance and floor plan of the premises for which application for a license is made.

If an applicant otherwise qualifies for a resort license but the premises to be licensed are still in construction, or are otherwise incomplete at the time of such application, the board shall issue a letter stating that the license will be issued at such time as the qualifications for a licensed premises have been met, setting forth such time limitations and requirements as the board may establish.

In addition to the restrictions on sale or transfer of a license as provided in section 4-410 herein, no resort retail liquor license may be sold or transferred for operation at a location outside of the boundaries of the resort area.

The annual fee for resort retail liquor licenses within a given resort area shall be two thousand dollars (\$2,000) for each such license.

A resort retail liquor license shall not be subject to the quota limitations set forth in section 4-403 (1) (a) above and a resort retail liquor license shall be issued by the board on the basis that the board has determined that such license is justified by public convenience and necessity, following a hearing as provided in section 4-407.1.

If any clause, sentence, paragraph, section, or any part of this act shall be declared and adjudged to be invalid and/or unconstitutional, such invalidity or unconstitutionality shall not affect, impair, invalidate or nullify the remainder of this act."

Section 2. There is a new section to be numbered 4-403.1, R.C.M. 1947, which reads as follows:

4-403.1. **Department of revenue determination required.** Any original license issued pursuant to this act, subsequent to April 30, 1974, shall be issued only upon the department of revenue having first determined, upon a hearing held pursuant to the Administrative Procedure Act, that the issuance of such license is justified by public convenience and necessity.

Section 3. This act shall be effective upon passage and approval.

Approved March 28, 1974

## CHAPTER NO. 341

AN ACT TO AMEND SECTIONS 70-704 AND 70-707, R.C.M. 1947, OF THE CONSUMER COUNSEL ACT, TO PERMIT MORE FREQUENT MEETINGS OF THE LEGISLATIVE CONSUMER COMMITTEE; TO GRANT TO THE CONSUMER COUNSEL SOME DISCRETION IN THE HEARINGS HE MUST ATTEND; TO SPECIFY INVESTIGATORY AND DISCOVERY POWERS OF THE CONSUMER COUNSEL; TO AUTHORIZE THE CONSUMER COUNSEL TO PAR-

TICIPATE IN COURT PROCEEDINGS INVOLVING THE PUBLIC SERVICE COMMISSION AND UTILITY AND TRANSPORTATION CONSUMERS PENDING BEFORE STATE AND FEDERAL COURTS IN ADDITION TO INSTITUTING SUCH PROCEEDINGS; AND TO AUTHORIZE THE CONSUMER COUNSEL TO PARTICIPATE IN APPROPRIATE PROCEEDINGS CONDUCTED BY FEDERAL ADMINISTRATIVE AGENCIES.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 70-704, R.C.M. 1947, is amended to read as follows:

**"70-704. Meetings of committee — expenses of members reimbursed.** The committee shall meet *at least* once each quarter to advise and consult with the consumer counsel. Committee members shall be reimbursed from the appropriation to the office of the consumer counsel for their actual and necessary expenses incurred and an additional sum equal to a legislator's pay while attending such meetings."

Section 2. Section 70-707, R.C.M. 1947, is amended to read as follows:

**"70-707. Powers and duties of consumer counsel—annual report.** The consumer counsel:

(1) *may* appear at public hearings conducted by the commission, as the representative of the consuming public, on all matters which come before the commission which in any way affect the consuming public, and shall have all the rights and powers of any party in interest appearing before the commission regarding examination and cross-examination of witnesses, presentation of evidence and other matters;

(2) may institute proceedings before the commission against regulated companies;

(3) has all the investigatory powers necessary to perform his duties as provided herein *and all discovery powers sanctioned by the Montana Rules of Civil Procedure and the Montana Administrative Procedure Act*;

(4) may examine in any commission proceedings under oath any officer, director, manager, or employee of any regulated company and inspect the business and corporate records of any regulated company in accordance with the law to aid in the exercise of his duties;

(5) may institute, *intervene in, or otherwise participate in* appropriate proceedings in the state and federal courts *and administrative agencies* in the name of *and on behalf of the utility and transportation* consuming public of the state of Montana *or substantial elements thereof including* review of decisions rendered by, *or failure to act by* the commission.

(6) shall meet and confer with members or representatives of the consuming public at such times and places as he determines appropriate;

(7) shall prepare and submit a yearly report and such other interim reports he determines advisable concerning his activities during the year and may recommend appropriate remedial legislation to the committee;

(8) has such other powers necessary to fully represent the interests of the consuming public before the commission as may be granted and promulgated by the committee in accordance with the provisions of the Montana Administrative Procedure Act."

Approved March 28, 1974

## CHAPTER NO. 342

AN ACT TO AMEND SECTION 93-2002, R.C.M. 1947, PERMITTING APPLICANTS APPROVED PRIOR TO JANUARY 1, 1970 TO BE ADMITTED TO THE BAR BY EXAMINATION.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 93-2002, R.C.M. 1947, is amended to read as follows:

"93-2002. **Qualifications, examination and admission.** (1) Every applicant for admission as an attorney and counselor must produce satisfactory testimonials of good moral character, and a certificate of one or more reputable counselors at law that he has been engaged in the study of law for two successive years prior to the making of such application, and undergo a strict examination as to his qualifications by any one or more of the justices of the supreme court. The form and manner of the examination shall be as the justices may, from time to time, determine; provided, however, that a diploma from the department of law of the University of Montana at Missoula, or evidence of having completed the course in law of three years of said department, shall entitle the holder to a license to practice law in all the courts of this state, subject to the right of the chief justice of the supreme court of the state to order an examination as in ordinary cases of applicants without such diploma or evidence.

(2) *Nothing in this section shall deny an applicant the right to admission by examination during the years 1974 and 1975, who was found qualified for admission by examination by the supreme court prior to January 1, 1970.*"

Approved March 28, 1974

## CHAPTER NO. 343

AN ACT CHANGING THE METHOD BY WHICH A SCHOOL DISTRICT MAY CALCULATE ITS AVERAGE NUMBER BELONGING WHEN PUPILS ARE ENROLLED IN SPECIAL EDUCATION PROGRAMS; AND AMENDING SECTIONS 75-6902 AND 75-6903, R.C.M. 1947.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 75-6902, R.C.M. 1947, is amended to read as follows:

**"75-6902. Definition and calculation of average number belonging (ANB).** The term "average number belonging" or "ANB" shall mean the average number of regularly enrolled, full-time pupils attending the public schools of a district. Average number belonging shall be computed by determining the total of the aggregate days of attendance by regularly enrolled, full-time pupils during the current school fiscal year plus the aggregate days of absence by regularly enrolled, full-time pupils during the current school fiscal year, and by dividing such total by one hundred eighty (180). Attendance for a part of a morning session or a part of an afternoon session by a pupil shall be counted as attendance for one-half ( $\frac{1}{2}$ ) day. In calculating the ANB for pupils enrolled in a program established under section 75-7507 prior to January 1, 1974, or pursuant to section 75-7507 (1), attendance at, or absence from, a regular session of the program for at least two hours of either a morning or an afternoon session will be counted as one-half ( $\frac{1}{2}$ ) of a day attended or absent as the case may be. When any pupil has been absent, with or without excuse, for more than ten (10) consecutive school days, including pupil instruction related days, his absence after the tenth (10th) day of absence shall not be included in the aggregate days of absence and his enrollment in the school shall not be considered in the calculation of the average number belonging until he resumes attendance at school.

*If a student spends less than half his time in the regular program and the balance of his time in school in the special education program, he shall be considered a full-time special pupil but shall not be considered regularly enrolled for ANB purposes. If a student spends half or more of his time in school in the regular program and the balance of his time in the special education program he shall be considered regularly enrolled for ANB purposes.*

The average number belonging of the regularly enrolled, full-time pupils for the public schools of a district shall be calculated, individually, for each school except that when:

(1) more than one school of a district, other than a junior high school in an elementary district which has been approved and accredited as a junior high school, is located within the incorporated limits of a city or town, the average number belonging of such schools shall be based on the aggregate of all the regularly enrolled, full-time pupils attending such schools located within the incorporated limits of a city or town;

(2) a junior high school which has been approved and accredited as a junior high school is located within the incorporated limits of a city or town in which a high school is located, all of the regularly enrolled, full-time pupils of the junior high school shall be considered as high school district pupils for the purposes of calculating the average number belonging of the high schools located within the incorporated limits of such city or town; or

(3) a school has not been accredited by the board of education, the

regularly enrolled, full-time pupils attending the nonaccredited school shall not be eligible for average number belonging calculation purposes, nor will an average number belonging for the nonaccredited school be used in determining the foundation program for such district."

Section 2. Section 75-6903, R.C.M. 1947, is amended to read as follows:

**"75-6903. Circumstances under which the regular average number belonging may be increased.** The average number belonging of a school for a given school fiscal year, calculated in accordance with the ANB formula prescribed in section 75-6902, may be increased when:

(1) the opening of a new elementary school or the reopening of an elementary school has been approved in accordance with section 75-6602. The average number belonging for such school shall be established by the county superintendent and approved, disapproved or adjusted by the superintendent of public instruction;

(2) the opening or reopening of a high school or a branch of the county high school has been approved in accordance with sections 75-6603, 75-6604 or 75-6605. The average number belonging for such high school shall be established by the county superintendent's estimate, after an investigation of the probable number of pupils that will attend such high school;

(3) a district anticipates an increase in the average number belonging due to the closing of any private or public school in the district or a neighboring district. The estimated increase in average number belonging shall be established by the trustees and the county superintendent and approved, disapproved, or adjusted by the superintendent of public instruction no later than the fourth Monday in June;

(4) a district anticipates an unusual enrollment increase in the ensuing school fiscal year. The increase in average number belonging shall be based on estimates of increased enrollment approved by the superintendent of public instruction and shall be computed in the manner prescribed by section 75-6904;

(5) for the initial year of operation of a program established under section 75-7507 (1), the ANB to be used for budget purposes is the same as one-half ( $\frac{1}{2}$ ) the number of five (5) year old children residing in the district as of October 1 of the preceding school year, either as shown on the official school census, or as determined by some other procedure approved by the superintendent of public instruction; or

(6) *a special full-time pupil, as defined in section 75-6902, in a given school year will no longer be considered a special full-time pupil in the ensuing school year. The superintendent of public instruction may grant one ANB for such pupil for the ensuing school year."*

Approved March 28, 1974

## CHAPTER NO. 344

### AN ACT ENUMERATING THE ALLOWABLE COSTS OF SPECIAL

EDUCATION PROGRAMS WHICH A SCHOOL DISTRICT MAY COUNT FOR THE PURPOSE OF ASSISTANCE FROM THE FOUNDATION PROGRAM AND REQUIRING AN ANNUAL ACCOUNTING; AND REPEALING SECTION 75-7813, R.C.M. 1947.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is a new section to be numbered 75-7813.1, R.C.M. 1947, which reads as follows:

**75-7813.1. Allowable cost schedule for special programs — the superintendent of public instruction to make rules — annual accounting.** (1) For the purpose of determining the maximum-budget-without-a-vote for special education as defined in sections 75-6905(20) and 75-6905(21), the following schedule of allowable costs shall be followed by the school district in preparation of its special education budget for state aid request purposes and by the superintendent of public instruction in his review and approval of the budget for the purposes of determining the amount of the maximum-budget-without-a-vote for special education for the district, and as used in this schedule, "full-time special pupil" and "regular ANB" are to be determined in accordance with sections 75-6902 and 75-6903.

(a) Administration; salaries, benefits, supplies and other expenses of the superintendent's office, the office of the board of trustees, and the business office including:

(i) salaries of professional administrative personnel — a portion of the entire cost corresponding to the portion of entire working time which each such person devotes to the special program;

(ii) salaries of clerical personnel for administrative staff — the amount allowed for budget purposes per full-time special pupil may not exceed the amount budgeted per regular ANB for the current year;

(iii) supplies and other expenses — the amount allowed for budget purposes per full-time special pupil may not exceed the amount budgeted per regular ANB for the current year.

(b) Instruction; salaries, benefits, supplies, textbooks and other expenses including:

(i) salaries of principals and clerical personnel — a portion of the entire cost corresponding to the portion of the entire working time which each such person devotes to the special program but not to exceed one and seventy-five hundredths (1.75) times the amount budgeted per regular ANB for the current year;

(ii) salaries and benefits of special program teachers, regular program teachers, teacher aides, special education supervisors, audiologists, and speech and hearing clinicians — the entire cost if employed full-time in the special program. If such personnel are shared between special and regular programs — a portion of the entire cost corresponding to the entire working time which each such person devotes to the special program;

(iii) teaching supplies and textbooks — if used exclusively for special programs the actual total cost. If shared with regular programs — the amount allowed for budget purposes per full-time special pupil may not exceed the amount budgeted per regular ANB for the current year;

(iv) other expenses — with the exception of the following items, the amount allowed for budget purposes per full-time special pupil may not exceed the amount budgeted per regular ANB for the current year:

(A) Contracted services, including fees paid for professional advice and consultation regarding special students or the special program, and the delivery of special education services by nonprofit agencies — the actual total cost.

(B) Transportation costs for special education personnel who must travel on an itinerant basis from school to school or district to district — the actual cost to the district calculated on the same mileage rate used by the district for other travel reimbursement purposes.

(c) Library services; salaries, books and periodicals and other expenses — the amount allowed for budget purposes per full-time special pupil may not exceed the amount budgeted per regular ANB for the current year.

(d) Supportive services; salaries, benefits and other expenses:

(i) salaries and benefits of professional supportive personnel — the entire cost if employed full-time in the special program. If such personnel are shared between special and regular programs — a portion of the entire cost corresponding to the entire working time which each such person devotes to the special program.

Professional supportive personnel may include counselors, social workers, psychologists, psychometrists, physicians, nurses, and physical and occupational therapists.

(ii) salaries and benefits of clerical personnel for professional personnel in supportive services — the entire cost if employed full-time in the special program. If such personnel are shared between special and regular programs — a portion of the entire cost corresponding to the entire working time which each such person devotes to the special program;

(iii) other expenses — the amount allowed for budget purposes per full-time special pupil may not exceed the amount budgeted per regular ANB for the current year.

(e) Operation of plant; salaries, benefits, heat for buildings, utilities except heating, and other supplies and expenses — the superintendent of public instruction shall make regulations fixing a ratio for operation spending per full-time special pupil to such spending per current year's regular ANB. The proration shall be based on the ratio between the number of special pupils per class and the number of regular pupils per class and any other relevant factors.

(f) Maintenance of plant; salaries, benefits, replacements and parts, contracted services — the superintendent of public instruction shall make



regulations fixing a ratio for maintenance spending per full-time special pupil to such spending per current year's regular ANB. The proration shall be based on the ratio between the number of special pupils per class and the number of regular pupils per class and any other relevant factors.

(g) School food services — the amount allowed for budget purposes per full-time special pupil may not exceed the amount budgeted per regular ANB for the current year.

(h) Student body and auxiliary services; salaries and other expenses — the amount allowed for budget purposes per full-time special pupil may not exceed the amount budgeted per regular ANB for the current year.

(i) Other current charges; insurance, rental of land and buildings, and other expenses:

(i) rental of land and buildings, when such premises meet all requirements of the board of public education and the department of health and environmental sciences — no such costs may be charged to the special program without specific authorization from the superintendent of public instruction unless the land and buildings are shared between the special and regular pupils, and the amount of the total cost that may be charged to the special program may not exceed whatever proportion the number of special full-time pupils are to the total enrollment of the school district of the previous year. Provided, however, that any school district renting land and buildings for special education purposes prior to the 1974-75 school year is not subject to this requirement, and will charge a portion of the total cost when shared with regular programs, to be prorated based on the amount of building space used by each type of program;

(ii) insurance — the superintendent of public instruction shall make regulations fixing a ratio for insurance spending per full-time special pupil to such spending per current year's regular ANB. The proration shall be based on the ratio between the number of special pupils per class and the number of regular pupils per class and any other relevant factors;

(iii) all other expenses — the amount allowed for budget purposes per full-time special pupil for a school year may not exceed the amount budgeted per regular ANB for the current school year.

(j) Capital outlay; sites, buildings, remodeling and improvements, equipment and other:

(i) classroom remodeling and improvements for a program for physically handicapped students — the actual total cost; all other remodeling and improvements — the amount allowed for budget purposes per full-time special pupil for a school year may not exceed the amount budgeted per regular ANB for the current school year;

(ii) equipment — the actual total cost;

(iii) sites — buildings — no such costs may be charged to the special program unless the sites and/or buildings are shared between the special and regular students, and the amount of the total cost that may be charged to the special program may not exceed whatever proportion the

number of special full-time pupils are to the total full-time enrollment of the school.

(iv) other — the amount allowed for budget purposes may not exceed the amount budgeted per regular ANB for the current year.

(k) Room and board costs when the special pupil has to attend a program at such a distance from his home that commuting is undesirable as determined by the superintendent of public instruction.

(2) The superintendent of public instruction shall, prior to the time when a district must have prepared its budget for the 1975-1976 year, promulgate rules and regulations, in accordance with the policies of the board of public education, for:

(a) keeping necessary records for supportive and administrative personnel and any personnel shared between special and regular programs;

(b) defining the total special program caseload that shall be assigned to specific support persons and the kinds of professional specialties to be considered relevant to the program before the district may count an allowable cost under subsection (1)(d) of this section;

(c) defining the kinds or types of equipment whose costs may be counted under subsections (1)(j)(ii) of this section; and

(d) prescribing formulas for calculating the portion of operation and maintenance costs, insurance, building and rental costs properly allocable to the special programs, as prescribed by subsections (1)(e), (1)(f), (1)(i)(i), and (1)(i)(ii) of this section.

(3) An annual accounting of all expenditures of school district general fund monies for special education shall be made by the district trustees on forms furnished by the superintendent of public instruction. The superintendent of public instruction shall make rules for such accounting.

Section 2. Section 75-7813, R.C.M. 1947, is repealed.

Approved March 28, 1974

## CHAPTER NO. 345

AN ACT ESTABLISHING PROCEDURES FOR FIXING SPECIAL EDUCATION PROGRAMS BUDGETS WITHIN SCHOOL BUDGETS AND RELATING SUCH SPECIAL PROGRAMS; AND AMENDING SECTIONS 75-6905 AND 75-6906, R.C.M. 1947.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 75-6905, R.C.M. 1947, is amended to read as follows:

"75-6905. **Maximum-general-fund-budget-without-a-voted-levy**

**schedules for elementary and high schools.** The total amount of the general fund budget of any district shall not be greater than the general fund budget amount specified in the following schedules, except when a district has adopted an emergency general fund budget under the provisions of section 75-6727 or when a district has voted an additional levy under the provisions of section 75-6923.

#### Elementary School Schedule for 1973-74

(1) For each elementary school having an ANB of nine (9) or fewer pupils, the maximum shall be seven thousand eight hundred six dollars and fifty cents (\$7,806.50), if said school is approved as an isolated school.

(2) For schools with an ANB of ten (10) pupils, but less than eighteen (18) pupils, the maximum shall be seven thousand eight hundred six dollars and fifty cents (\$7,806.50) plus two hundred seventy-six dollars and fifty cents (\$276.50) per pupil on the basis of the average number belonging over nine (9).

(3) For schools with an ANB of eighteen (18) pupils and employing one (1) teacher, the maximum shall be ten thousand two hundred eighty-six dollars (\$10,286) plus three hundred sixty-four dollars and fifty cents (\$364.50) per pupil on the basis of the average number belonging over eighteen (18), not to exceed an ANB of twenty-five (25).

(4) For schools with an ANB of eighteen (18) pupils and employing two (2) full-time teachers, the maximum shall be seventeen thousand five hundred eighty-six dollars (\$17,586) plus two hundred fifty-two dollars and fifty cents (\$252.50) per pupil on the basis of the average number belonging over eighteen (18), not to exceed an ANB of fifty (50).

(5) For schools having an ANB in excess of forty (40) the maximum on the basis of the total pupils (ANB) in the district for elementary pupils will be as follows:

For a school having an ANB of more than forty (40) and employing a minimum of three (3) teachers, the maximum of six hundred forty-two dollars and fifty cents (\$642.50) shall be decreased at the rate of forty-three cents (\$.43) for each additional pupil until the total number (ANB) shall have reached a total of one hundred (100) pupils. For a school having an ANB of more than one hundred (100) pupils, the maximum of six hundred sixteen dollars and fifty cents (\$616.50) shall be decreased at the rate of fifty-one cents (\$.51) for each additional pupil until the ANB shall have reached three hundred (300) pupils. For a school having an ANB of more than three hundred (300) pupils, the maximum shall not exceed five hundred thirteen dollars and fifty cents (\$513.50) for each pupil.

(6) The maximum per pupil, for all pupils (ANB) and for all elementary schools shall be computed on the basis of the amount allowed herein on account of the last eligible pupil, ANB. All elementary schools operated within the incorporated limits of a city or town shall be treated as one (1) school for the purpose of this schedule.

#### High School Schedule for 1973-74

(7) For each high school having an ANB of twenty-four (24) or fewer pupils, the maximum shall be thirty-seven thousand five hundred ten dollars (\$37,510).

(8) For a secondary school having an ANB of more than twenty-four (24) pupils, the maximum one thousand five hundred sixty-two dollars and seventy-five cents (\$1,562.75) shall be decreased at the rate of nine dollars seventy-five cents (\$9.75) for each additional pupil until the ANB shall have reached a total of forty (40) such pupils. For a school having an ANB of more than forty (40) pupils, the maximum of one thousand four hundred six dollars and seventy-five cents (\$1,406.75) shall be decreased at the rate of six dollars sixty cents (\$6.60) for each additional pupil until the ANB shall have reached one hundred (100) pupils. For a school having an ANB of more than one hundred (100) pupils, a maximum of one thousand nine dollars and seventy-five cents (\$1,009.75) shall be decreased at the rate of two dollars fifteen cents (\$2.15) for each additional pupil until the ANB shall have reached two hundred (200) pupils. For a school having an ANB of more than two hundred (200) pupils, the maximum of seven hundred ninety-four dollars and seventy-five cents (\$794.75) shall be decreased by forty-nine cents (\$.49) for each additional pupil until the ANB shall have reached three hundred (300) pupils. For a school having an ANB of more than three hundred (300) pupils, the maximum of seven hundred forty-six dollars and seventy-five cents (\$746.75) shall be decreased at the rate of thirteen cents (\$.13) until the ANB shall have reached six hundred (600) pupils. For a school having an ANB over six hundred (600) pupils, the maximum shall not exceed seven hundred eight dollars and seventy-five cents (\$708.75) per pupil.

(9) The maximum per pupil for all pupils (ANB) and for all high schools shall be computed on the basis of the amount allowed herein on account of the last eligible pupil, ANB. All high schools and junior high schools which have been approved and accredited as junior high schools, operated within the incorporated limits of a city or town shall be treated as one (1) school for the purpose of this schedule.

Elementary School Schedule for 1974-75  
and Succeeding Years

(10) For each elementary school having an ANB of nine (9) or fewer pupils, the maximum shall be eight thousand thirty-seven dollars (\$8,037), if said school is approved as an isolated school.

(11) For schools with an ANB of ten (10) pupils, but less than eighteen (18) pupils, the maximum shall be eight thousand thirty-seven dollars (\$8,037) plus three hundred two dollars (\$302) per pupil on the basis of the average number belonging over nine (9).

(12) For schools with an ANB of eighteen (18) pupils and employing one (1) teacher, the maximum shall be ten thousand seven hundred forty-seven dollars (\$10,747) plus three hundred ninety dollars (\$390) per pupil on the basis of the average number belonging over eighteen (18), not to exceed an ANB of twenty-five (25).

(13) For schools with an ANB of eighteen (18) pupils and employing two (2) full-time teachers, the maximum shall be eighteen thousand forty-seven dollars (\$18,047) plus two hundred seventy-eight dollars (\$278) per pupil on the basis of the average number belonging over eighteen (18), not to exceed an ANB of fifty (50).

(14) For schools having an ANB in excess of forty (40) the maximum on the basis of the total pupils (ANB) in the district for elementary pupils will be as follows:

For a school having an ANB of more than forty (40) and employing a minimum of three (3) teachers, the maximum of six hundred sixty-eight dollars (\$668) shall be decreased at the rate of forty-three cents (\$.43) for each additional pupil until the total number (ANB) shall have reached a total of one hundred (100) pupils. For a school having an ANB of more than one hundred (100) pupils, the maximum of six hundred forty-two dollars (\$642) shall be decreased at the rate of fifty-one cents (\$.51) for each additional pupil until the ANB shall have reached three hundred (300) pupils. For a school having an ANB of more than three hundred (300) pupils, the maximum shall not exceed five hundred thirty-nine dollars (\$539) for each pupil.

(15) The maximum per pupil, for all pupils (ANB) and for all elementary schools shall be computed on the basis of the amount allowed herein on account of the last eligible pupil, ANB. All elementary schools operated within the incorporated limits of a city or town shall be treated as one (1) school for the purpose of this schedule.

High School Schedule for 1974-75  
and Succeeding Years

(16) For each high school having an ANB of twenty-four (24) or fewer pupils, the maximum shall be thirty-eight thousand three hundred sixty-two dollars (\$38,362).

(17) For a secondary school having an ANB of more than twenty-four (24) pupils, the maximum one thousand five hundred ninety-eight dollars and twenty-five cents (\$1,598.25) shall be decreased at the rate of nine dollars seventy-five cents (\$9.75) for each additional pupil until the ANB shall have reached a total of forty (40) such pupils. For a school having an ANB of more than forty (40) pupils, the maximum of one thousand four hundred forty-two dollars and twenty-five cents (\$1,442.25) shall be decreased at the rate of six dollars sixty cents (\$6.60) for each additional pupil until the ANB shall have reached one hundred (100) pupils. For a school having an ANB of more than one hundred (100) pupils, a maximum of one thousand forty-five dollars and twenty-five cents (\$1,045.25) shall be decreased at the rate of two dollars fifteen cents (\$2.15) for each additional pupil until the ANB shall have reached two hundred (200) pupils. For a school having an ANB of more than two hundred (200) pupils, the maximum of eight hundred thirty dollars and twenty-five cents (\$830.25) shall be decreased by forty-nine cents (\$.49) for each additional pupil until the ANB shall have reached three hundred (300) pupils. For a school having an ANB of more than three hundred (300) pupils, the maximum of seven hundred eighty-two dollars and twenty-five cents (\$782.25) shall be decreased at the rate of thirteen cents (\$.13) until the ANB shall have reached six hundred (600) pupils. For a school having an ANB over six hundred (600) pupils, the maximum shall not exceed seven hundred forty-four dollars and twenty-five cents (\$744.25) per pupil.

(18) The maximum per pupil for all pupils (ANB) and for all high

schools shall be computed on the basis of the amount allowed herein on account of the last eligible pupil, ANB. All high schools and junior high schools which have been approved and accredited as junior high schools, operated within the incorporated limits of a city or town shall be treated as one (1) school for the purpose of this schedule.

(19) The general fund budget amount for an approved and accredited junior high school shall be prorated between the elementary district general fund budget and the high school district general fund budget in the following manner:

(a) determine the per-ANB schedule amount for the school, as defined by this section, from the high school schedule;

(b) calculate the ANB for the regularly enrolled full-time pupils enrolled in the seventh (7th) and eighth (8th) grades of the junior high school;

(c) multiply the per-ANB schedule amount determined in subsection (a) by the ANB calculated in subsection (b) to determine the authorized general fund budget amount which shall be available for the elementary district general fund budget; and

(d) subtract the amount determined in subsection (c) from the total authorized general fund budget amount for the school to determine the authorized general fund budget amount which shall be available for the high school district general fund budget.

(20) *For the purpose of establishing the maximum budget without a vote amount for current year special education program for a school district, the superintendent of public instruction will determine the total estimated cost of the special education program for the school district on the basis of a special education program budget submitted by the district. The budget will be prepared on forms provided by the superintendent of public instruction and will set out for each program*

(a) *the estimated allowable costs associated with operating the program where allowable costs are as defined in section 75-7813.1;*

(b) *the number of pupils expected to be enrolled in the program; and*

(c) *any other data required by the superintendent of public instruction for budget justification purposes and to administer the provisions of this act. The total amount of allowable costs approved by the superintendent of public instruction shall be the special education maximum-budget-without-a-vote amount for current year special education program purposes. The total amount of allowable costs that are approved for the special education budget shall not, under any condition, be less than the maximum-budget-without-a-vote amount for one regular ANB for each special full-time pupil in the school district.*

(21) *If a special education program is implemented or expanded during a given school term too late to be included in the determination of the district maximum-budget-without-a-vote for the school year as prescribed in this chapter, then subject to the approval of the program by the superintendent, under the emergency budget provisions of section 75-6723(5),*

*allowable costs approved under the budgeting provisions of section 75-6905(20) for the operation of the program during the given year may be added to the maximum-budget-without-a-vote amount for special education for the subsequent school year. Such costs must be recorded as "previous year special education expenses" in the school district budget for the subsequent school year.*

*(22) The sum of the previous year special education expenses as defined in subsection (21) above, and the maximum-budget-without-a-vote for current year special education as defined in subsection (20) shall be the special education budget for accounting purposes.*

*The maximum-budget-without-a-vote for special education will be added to the maximum-budget-without-a-vote of the regular program ANB defined in sections 75-6902 and 75-6903 to obtain the total maximum-budget-without-a-vote for the district."*

Section 2. Section 75-6906, R.C.M. 1947, is amended to read as follows:

**"75-6906. Definition of foundation program and its proportion of the maximum-general-fund-without-a-voted-levy schedule amount, and nonisolated school foundation program financing.** (1) As used in this title, the term "foundation program" shall mean the minimum operating expenditures as established herein, that are sufficient to provide for the educational program of a school. It shall be financed by (a) county equalization moneys, (b) state equalization aid, and (c) when required, moneys from an additional state levy for a state deficiency. The foundation program relates only to those expenditures authorized by a district's general fund budget and shall not include expenditures from any other fund.

(2) The dollar amount of the foundation program shall be eighty percent (80%) of the maximum-general-fund-budget-without-a-voted-levy limitation as set forth in the schedules in section 75-6905. The foundation program of an elementary school having an ANB of nine (9) or fewer pupils which is not approved as an isolated school under the provisions of section 75-6608 shall be eighty percent (80%) of the schedule amount but the county and state shall participate in financing one-half ( $\frac{1}{2}$ ) of the foundation program and the district shall finance the remaining one-half ( $\frac{1}{2}$ ) by a tax levied on the property of the district. When a school of nine (9) or fewer pupils is approved as isolated under the provisions of section 75-6608, the county and state shall participate in the financing of the total amount of the foundation program.

(3) *Funds provided to support the special education accounting budget may be expended only for special education purposes as approved by the superintendent of public instruction in accordance with the special education budgeting provisions of this title. Expenditures for special education shall be accounted for separately from the balance of the school district general fund. Transfers between items within the special education budget for accounting purposes may be made at the discretion of the board of trustees in accordance with the financial administration chapter of this title. The unexpended balance of the special education accounting budget*

*shall carry over to the next year to reduce the amount of funding required to finance the district's ensuing year's maximum-budget-without-a-vote for special education."*

Approved March 28, 1974

## CHAPTER NO. 346

AN ACT ALLOWING A SCHOOL TO EXCEED THE STATUTORY LIMITATION OF THE GENERAL FUND BUDGET BY VIRTUE OF ESTABLISHING A NEW SPECIAL EDUCATION PROGRAM, AND AMENDING SECTION 75-6923, R.C.M. 1947.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 75-6923, R.C.M. 1947, is amended to read as follows:

**"75-6923. Additional levy for general fund and election for authorization to impose.** The trustees of any district may propose to adopt a general fund budget in excess of the general fund budget amount for such district as established by the schedule in section 75-6905 for any of the following purposes:

- (1) building, altering, repairing or enlarging any schoolhouse of the district;
- (2) furnishing additional school facilities for the district;
- (3) acquisition of land for the district;
- (4) proper maintenance and operation of the school programs of the district.

However, the trustees may not adopt a total general fund budget which exceeds one hundred seven percent (107%) of the general fund budget for the preceding year, unless such budget is adopted under conditions as provided in sections 75-6723 through 75-6730, or under the following conditions:

- (a) new programs which are approved under 75-6903 or existing programs which are expanded as a result of ANB increases approved under 75-6903;
- (b) federal programs which are continued with local funds if federal funds are withdrawn or withheld;
- (c) *new programs of special education are approved.*

In subsection (a), above, the budget may exceed 107% of the preceding year's budget by a dollar amount equal to the increase in the maximum budget without a vote resulting from the introduction of the new or expanded program and in subsection (b), above, by a dollar amount not



to exceed the amount received from federal sources for the preceding year. Nothing in this act shall prevent a school district from adopting a budget at least as large as the maximum budget without a vote as provided in section 75-6905.

When the trustees of any district determine that an additional amount of financing is required for the general fund budget that is in excess of the statutory schedule amount, the trustees shall submit the proposition of an additional levy to raise such excess amount of general fund financing to the electors who are qualified, under section 75-6410, to vote upon such proposition. Such special election shall be called and conducted in the manner prescribed by this title for school elections. The ballot for such election shall state the amount of money to be raised by additional property taxation, the approximate number of mills required to raise such money, and the purpose for which such money will be expended, and it shall be in the following format:

#### PROPOSITION

Shall a levy be made in addition to the levies authorized by law in such number of mills as may be necessary to raise the sum of (state the amount to be raised by additional tax levy), and being approximately (give number) mills, for the purpose of (insert the purpose for which the additional tax levy is made)?

☐ FOR the additional levy.

☐ AGAINST the additional levy.

If the election on any additional levy for the general fund is approved by a majority vote of those electors voting at such election, the proposition shall carry and the trustees may use any portion or all of the authorized amount in adopting the preliminary general fund budget. The trustees shall certify the additional levy amount authorized by such a special election on the budget form that is submitted to the county superintendent and the county commissioners shall levy such number of mills on the taxable value of all taxable property within the district as prescribed in section 75-6926, as are required to raise the amount of such additional levy.

Authorization to levy an additional tax under the provisions of this section shall be effective for only one school fiscal year and shall be authorized by a special election conducted before the first day of August of the school fiscal year for which it is effective. Only one such additional levy for the maintenance and operation of the school programs of a high school district may be imposed by a high school district in a given school fiscal year."

Approved March 28, 1974

### CHAPTER NO. 347

AN ACT RELATING TO THE SCHOOL FOUNDATION PROGRAM;

PROVIDING FOR CHANGES IN FINANCIAL SCHEDULES FOR THE  
MAXIMUM GENERAL FUND BUDGETS FOR ELEMENTARY AND  
HIGH SCHOOLS; AND AMENDING SECTION 75-6905, R.C.M. 1947.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 75-6905, R.C.M. 1947, is amended to read as follows:

"75-6905. **Maximum-general-fund-budget-without-a-voted-levy schedules for elementary and high schools.** The total amount of the general fund budget of any district shall not be greater than the general fund budget amount specified in the following schedules, except when a district has adopted an emergency general fund budget under the provisions of section 75-6727 or when a district has voted an additional levy under the provisions of section 75-6923.

Elementary School Schedule for 1973-74

(1) For each elementary school having an ANB of nine (9) or fewer pupils, the maximum shall be seven thousand eight hundred six dollars and fifty cents (\$7,806.50), if said school is approved as an isolated school.

(2) For schools with an ANB of ten (10) pupils, but less than eighteen (18) pupils, the maximum shall be seven thousand eight hundred six dollars and fifty cents (\$7,806.50) plus two hundred seventy-six dollars and fifty cents (\$276.50) per pupil on the basis of the average number belonging over nine (9).

(3) For schools with an ANB of eighteen (18) pupils and employing one (1) teacher, the maximum shall be ten thousand two hundred eighty-six dollars (\$10,286) plus three hundred sixty-four dollars and fifty cents (\$364.50) per pupil on the basis of the average number belonging over eighteen (18), not to exceed an ANB of twenty-five (25).

(4) For schools with an ANB of eighteen (18) pupils and employing two (2) full-time teachers, the maximum shall be seventeen thousand five hundred eighty-six dollars (\$17,586) plus two hundred fifty-two dollars and fifty cents (\$252.50) per pupil on the basis of the average number belonging over eighteen (18), not to exceed an ANB of fifty (50).

(5) For schools having an ANB in excess of forty (40) the maximum on the basis of the total pupils (ANB) in the district for elementary pupils will be as follows:

For a school having an ANB of more than forty (40) and employing a minimum of three (3) teachers, the maximum of six hundred forty-two dollars and fifty cents (\$642.50) shall be decreased at the rate of forty-three cents (\$.43) for each additional pupil until the total number (ANB) shall have reached a total of one hundred (100) pupils. For a school having an ANB of more than one hundred (100) pupils, the maximum of six hundred sixteen dollars and fifty cents (\$616.50) shall be decreased at the rate of fifty-one cents (\$.51) for each additional pupil until the ANB shall have reached three hundred (300) pupils. For a school having an ANB

of more than three hundred (300) pupils, the maximum shall not exceed five hundred thirteen dollars and fifty cents (\$513.50) for each pupil.

(6) The maximum per pupil, for all pupils (ANB) and for all elementary schools shall be computed on the basis of the amount allowed herein on account of the last eligible pupil, ANB. All elementary schools operated within the incorporated limits of a city or town shall be treated as one (1) school for the purpose of this schedule.

#### High School Schedule for 1973-74

(7) For each high school having an ANB of twenty-four (24) or fewer pupils, the maximum shall be thirty-seven thousand five hundred ten dollars (\$37,510).

(8) For a secondary school having an ANB of more than twenty-four (24) pupils, the maximum one thousand five hundred sixty-two dollars and seventy-five cents (\$1,562.75) shall be decreased at the rate of nine dollars seventy-five cents (\$9.75) for each additional pupil until the ANB shall have reached a total of forty (40) such pupils. For a school having an ANB of more than forty (40) pupils, the maximum of one thousand four hundred six dollars and seventy-five cents (\$1,406.75) shall be decreased at the rate of six dollars sixty cents (\$6.60) for each additional pupil until the ANB shall have reached one hundred (100) pupils. For a school having an ANB of more than one hundred (100) pupils, a maximum of one thousand nine dollars and seventy-five cents (\$1,009.75) shall be decreased at the rate of two dollars fifteen cents (\$2.15) for each additional pupil until the ANB shall have reached two hundred (200) pupils. For a school having an ANB of more than two hundred (200) pupils, the maximum of seven hundred ninety-four dollars and seventy-five cents (\$794.75) shall be decreased by forty-nine cents (\$.49) for each additional pupil until the ANB shall have reached three hundred (300) pupils. For a school having an ANB of more than three hundred (300) pupils, the maximum of seven hundred forty-six dollars and seventy-five cents (\$746.75) shall be decreased at the rate of thirteen cents (\$.13) until the ANB shall have reached six hundred (600) pupils. For a school having an ANB over six hundred (600) pupils, the maximum shall not exceed seven hundred eight dollars and seventy-five cents (\$708.75) per pupil.

(9) The maximum per pupil for all pupils (ANB) and for all high schools shall be computed on the basis of the amount allowed herein on account of the last eligible pupil, ANB. All high schools and junior high schools which have been approved and accredited as junior high schools, operated within the incorporated limits of a city or town shall be treated as one (1) school for the purpose of this schedule.

#### Elementary School Schedule for 1974-75 and Succeeding Years

(10) For each elementary school having an ANB of nine (9) or fewer pupils, the maximum shall be *eight thousand one hundred forty-nine dollars and fifty cents (\$8,149.50)*, if said school is approved as an isolated school.

(11) For schools with an ANB of ten (10) pupils, but less than eighteen

(18) pupils, the maximum shall be *eight thousand one hundred forty-nine dollars and fifty cents (\$8,149.50)* plus *three hundred fourteen dollars and fifty cents (\$314.50)* per pupil on the basis of the average number belonging over nine (9).

(12) For schools with an ANB of eighteen (18) pupils and employing one (1) teacher, the maximum shall be *ten thousand nine hundred seventy-two dollars (\$10,972)* plus *four hundred two dollars and fifty cents (\$402.50)* per pupil on the basis of the average number belonging over eighteen (18), not to exceed an ANB of twenty-five (25).

(13) For schools with an ANB of eighteen (18) pupils and employing two (2) full-time teachers, the maximum shall be *eighteen thousand two hundred seventy-two dollars (\$18,272)* plus *two hundred ninety dollars and fifty cents (\$290.50)* per pupil on the basis of the average number belonging over eighteen (18), not to exceed an ANB of fifty (50).

(14) For schools having an ANB in excess of forty (40) the maximum on the basis of the total pupils (ANB) in the district for elementary pupils will be as follows:

For a school having an ANB of more than forty (40) and employing a minimum of three (3) teachers, the maximum of *six hundred eighty dollars and fifty cents (\$680.50)* shall be decreased at the rate of forty-three cents (\$.43) for each additional pupil until the total number (ANB) shall have reached a total of one hundred (100) pupils. For a school having an ANB of more than one hundred (100) pupils, the maximum of *six hundred fifty-four dollars and fifty cents (\$654.50)* shall be decreased at the rate of fifty-one cents (\$.51) for each additional pupil until the ANB shall have reached three hundred (300) pupils. For a school having an ANB of more than three hundred (300) pupils, the maximum shall not exceed *five hundred dollars and fifty-one dollars and fifty cents (\$551.50)* for each pupil.

(15) The maximum per pupil, for all pupils (ANB) and for all elementary schools shall be computed on the basis of the amount allowed herein on account of the last eligible pupil, ANB. All elementary schools operated within the incorporated limits of a city or town shall be treated as one (1) school for the purpose of this schedule.

#### High School Schedule for 1974-75 and Succeeding Years

(16) For each high school having an ANB of twenty-four (24) or fewer pupils, the maximum shall be *thirty-eight thousand six hundred sixty-two dollars (\$38,662)*.

(17) For a secondary school having an ANB of more than twenty-four (24) pupils, the maximum *one thousand six hundred ten dollars and seventy-five cents (\$1,610.75)* shall be decreased at the rate of nine dollars seventy-five cents (\$9.75) for each additional pupil until the ANB shall have reached a total of forty (40) such pupils. For a school having an ANB of more than forty (40) pupils, the maximum of *one thousand four hundred fifty-four dollars and seventy-five cents (\$1,454.75)* shall be decreased at the rate of six dollars sixty cents (\$6.60) for each additional pupil until

the ANB shall have reached one hundred (100) pupils. For a school having an ANB of more than one hundred (100) pupils, a maximum of *one thousand fifty-seven dollars and seventy-five cents (\$1,057.75)* shall be decreased at the rate of two dollars fifteen cents (\$2.15) for each additional pupil until the ANB shall have reached two hundred (200) pupils. For a school having an ANB of more than two hundred (200) pupils, the maximum of *eight hundred forty-two dollars and seventy-five cents (\$842.75)* shall be decreased by forty-nine cents (\$.49) for each additional pupil until the ANB shall have reached three hundred (300) pupils. For a school having an ANB of more than three hundred (300) pupils, the maximum of *seven hundred ninety-four dollars and seventy-five cents (\$794.75)* shall be decreased at the rate of thirteen cents (\$.13) until the ANB shall have reached six hundred (600) pupils. For a school having an ANB over six hundred (600) pupils, the maximum shall not exceed *seven hundred fifty-six dollars and seventy-five cents (\$756.75)* per pupil.

(18) The maximum per pupil for all pupils (ANB) and for all high schools shall be computed on the basis of the amount allowed herein on account of the last eligible pupil, ANB. All high schools and junior high schools which have been approved and accredited as junior high schools, operated within the incorporated limits of a city or town shall be treated as one (1) school for the purpose of this schedule.

(19) The general fund budget amount for an approved and accredited junior high school shall be prorated between the elementary district general fund budget and the high school district general fund budget in the following manner:

(a) determine the per-ANB schedule amount for the school, as defined by this section, from the high school schedule;

(b) calculate the ANB for the regularly enrolled full-time pupils enrolled in the seventh (7th) and eighth (8th) grades of the junior high school;

(c) multiply the per-ANB schedule amount determined in subsection (a) by the ANB calculated in subsection (b) to determine the authorized general fund budget amount which shall be available for the elementary district general fund budget; and

(d) subtract the amount determined in subsection (c) from the total authorized general fund budget amount for the school to determine the authorized general fund budget amount which shall be available for the high school district general fund budget.

The general fund budget amount determined for each school of a district under the schedules provided in this section shall be totaled to determine the maximum-general-fund-budget-without-a-voted-levy for such district."

Approved March 28, 1974

## CHAPTER NO. 348

AN ACT FOR THE CODIFICATION AND GENERAL REVISION OF

## THE LAWS RELATING TO THE DEPARTMENT OF INTER-GOVERNMENTAL RELATIONS.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 1-101, R.C.M. 1947, is amended to read as follows:

"1-101. **Act, how cited.** Sections 1-101 through 1-103, 1-201 through 1-205, 1-301 through 1-310, 1-401, and 1-501 through 1-504 may be cited as the "State Aeronautical Regulatory Act."

Section 2. Section 1-102, R.C.M. 1947, is amended to read as follows:

"1-102. **Definitions.** *Unless the context requires otherwise, in this title:*

(1) "*Department*" means the department of intergovernmental relations provided for in Title 82A, chapter 9.

(2) "*Aeronautics*" means transportation by aircraft; the operation, construction, repair, or maintenance of aircraft, aircraft power plants and accessories, including the repair, packing, and maintenance of parachutes; the design, establishment, construction, extension, operation, improvement, repair, or maintenance of airports, restricted landing areas, or other air navigation facilities; and air instruction.

(3) "*Aircraft*" means a contrivance used or designed for navigation of or flight in the air.

(4) "*Public aircraft*" means an aircraft used exclusively in the service of any government or of a political subdivision of a government, including the government of a state, territory, or possession of the United States, or the District of Columbia, but not including a government-owned aircraft engaged in carrying persons or property for commercial purposes.

(5) "*Civil aircraft*" means an aircraft other than a public aircraft.

(6) "*Airport*" means an area of land or water, except a restricted landing area, which is designed for the landing and take-off of aircraft, whether or not facilities are provided for the shelter, servicing, or repair of aircraft, or for receiving or discharging passengers or cargo, and all appurtenant areas used or suitable for airport buildings or other airport facilities, and all appurtenant rights of way.

(7) "*Restricted landing area*" means an area of land, water, or both, which is used or is made available for the landing and take-off of aircraft, the use of which shall, except in case of emergency, be only as provided by the department.

(8) "*Air navigation facility*" means a facility used in, available for use in, or designed for use in, aid of air navigation, including airports, restricted landing areas, and structures, mechanisms, lights, beacons, marks, communicating systems, or other instrumentalities or devices used or useful as an aid, or constituting an advantage or convenience, to the safe taking-off, navigation, and landing of aircraft, or the safe and efficient operation or maintenance of an airport or restricted area, and any combination of these facilities.

(9) "Air navigation" means the operation or navigation of aircraft in the air space over this state, or upon *an* airport or restricted landing area within this state.

(10) "Operation of aircraft" or "operate aircraft" means the use of aircraft for the purpose of air navigation, and includes the navigation or piloting of aircraft. A person who causes or authorizes the operation of aircraft, whether with or without the right of legal control (in the capacity of owner, lessee, or otherwise) of the aircraft, *operates the* aircraft.

(11) "Airman" means *an* individual who engages, as the person in command, or as pilot, mechanic, or member of the crew, in the navigation of aircraft while under way and (excepting individuals employed outside the United States, *an* individual employed by a manufacturer of aircraft, aircraft engines, propellers, or appliances to perform duties as inspector or mechanic in connection *with them*, and *an* individual performing inspection or mechanical duties in connection with aircraft owned or operated by him) *an* individual who is directly in charge of the inspection, maintenance, overhauling, or repair of aircraft engines, propellers, or appliances; and *an* individual who serves in the capacity of aircraft dispatcher or air-traffic control-tower operator.

(12) "Air instruction" means the imparting of aeronautical information by *an* aeronautics instructor or in or by *an* air school or flying club.

(13) "Air school" means *a* person engaged in giving or offering to give instruction in aeronautics, either in flying or ground subjects, or both, for or without hire or reward, and advertising, representing, or holding himself out as giving or offering to give *that* instruction. It does not include *a* public school or university of this state, or *an* institution of higher learning accredited and approved for carrying on collegiate work.

(14) "Aeronautics instructor" means *an* individual engaged in giving instruction or offering to give instruction in aeronautics, either in flying or ground subjects, or both, for hire or reward, without advertising *that* occupation, without calling his facilities an "air school" or anything equivalent to *an* "air school", and without employing or using other instructors. It does not include *an* instructor in *a* public school or university of this state, or *an* institution of higher *learning* accredited and approved for carrying on collegiate work, while engaged in his duties as *an* instructor.

(15) "Flying club" means *a* person other than an individual, which, neither for profit nor reward, owns, leases, or uses one or more aircraft for the purpose of instruction or pleasure or both.

(16) "Person" means *an* individual, firm, partnership, *private, municipal, or public* corporation, company, association, joint stock association, or body politic; and includes *a* trustee, receiver, assignee, or other similar representative.

(17) "State airway" means *a* route in the navigable air space over and above the lands or waters of this state, designated by the *department* as *a* route suitable for air navigation.

(18) "Navigable air space" means air space above the minimum

altitudes of flight prescribed by the laws of this state or by regulations of the *department*.

(19) "Municipality" or "*political subdivision*" means a county, city, village, or town of this state and any other political subdivision, public corporation, authority, or district in this state authorized by law to acquire, establish, construct, maintain, improve, and operate airports and other air navigation facilities.

(20) "Airport protection privileges" means easements through or other interests in air space over land or water, interests in airport hazards outside the boundaries of airports or restricted landing areas, and other protection privileges, the acquisition or control of which is necessary to ensure safe approaches to the landing areas of airports and restricted landing areas and the safe and efficient operation thereof.

(21) "Airport hazard" means a structure, object of natural growth, or use of land which obstructs the air space required for the flight of aircraft in landing or taking off at an airport or restricted landing area or is otherwise hazardous to landing or taking off."

Section 3. Section 1-203, R.C.M. 1947, is amended to read as follows:

"1-203. **Meetings of the board.** Regular meetings shall be held at *the board's* offices at Helena, but, whenever the convenience of the public or of the parties may be promoted, or delay or expense may be prevented, it may hold hearings or proceedings at any other place designated by it."

Section 4. Section 1-204, R.C.M. 1947, is amended to read as follows:

"1-204. **General powers and duties of department pertaining to aeronautics.** (1) *The department shall supervise aeronautics within this state. It shall encourage, foster, and assist in the development of aeronautics and encourage the establishment of airports and other air navigation facilities.*

(2) *The department shall cooperate with and assist the federal government, the political subdivisions of this state, and others engaged in aeronautics or the promotion of aeronautics, and shall coordinate the aeronautical activities of these bodies.*

(3) *The department may designate, design, and establish, expand, or modify a state airways system which will best serve the interests of the state. It may chart that airways system and arrange for publication and distribution of maps, charts, notices, and bulletins relating to the airways which may be required in the public interest. The system shall be supplementary to and co-ordinated in design and operation with the federal airways system. It may include all types of air navigation facilities, but the facilities must conform to federal safety standards.*

(4) *The department may draft and recommend necessary legislation to advance the interests of the state in aeronautics and represent the state in aeronautical matters before federal agencies and other state agencies.*

(5) *The department may participate as party plaintiff or defendant, or as intervener on behalf of the state or a municipality or citizen, in a controversy involving any claimed encroachment by the federal govern-*



ment or any foreign state upon state or individual rights pertaining to aeronautics.

(6) The *department* may use the facilities and services of other agencies of the state when reasonably available.

(7) The *department* may enter into any contracts necessary to the execution of the powers granted the *department* by this *title*.

(8) The *department* shall grant no exclusive right for the use of *an* airway, airport, restricted landing area, or other air navigation facility under its jurisdiction. This *subsection does* not prevent the making of leases in accordance with other provisions of this *title*."

Section 5. There is a new section to be numbered 1-204.1, R.C.M. 1947, which reads as follows:

1-204.1. **Cooperation with the federal government.** (1) The department may confer with or hold joint hearings with any federal aeronautical agency in connection with any matter arising under this title or relating to the sound development of aeronautics, and may avail itself of the cooperation, services, records, and facilities of federal agencies, as fully as practicable, in the administration and enforcement of this title. It shall reciprocate by furnishing to the federal agencies its cooperation, services, records, and facilities, to the extent practicable.

(2) It shall report to the appropriate federal agency all accidents in aeronautics in this state of which it is informed and preserve, protect, and prevent the removal of the component parts of any aircraft involved in an accident being investigated by it until a federal agency begins an investigation. It shall report to the appropriate federal agency all refusals by it to register federal licenses, certificates, or permits, and all revocations of certificates of registration, and the reasons for its action, and all penalties of which it has knowledge imposed upon airmen for violations of the laws of this state relating to aeronautics or for violations of the rules or orders of the department.

Section 6. There is a new section to be numbered 1-204.2, R.C.M. 1947, which reads as follows:

1-204.2. **Rules, orders, and standards — adoption — conformity with federal legislation and rules.** (1) The department may perform acts; issue and amend orders; adopt reasonable, general, or special rules; and establish minimum standards, consistent with this title, as it considers necessary to carry out this title and to perform its duties, for the purpose of protecting and ensuring the general public interest and safety; the safety of persons receiving instruction concerning, or operating, using, or traveling in aircraft, and of persons and property on land or water; and to develop and promote aeronautics in this state.

(2) All rules prescribed by the department under this title shall be kept in conformity, as nearly as may be, with the then current federal legislation governing aeronautics and the rules and standards adopted or issued under federal legislation.

Section 7. There is a new section to be numbered 1-204.3, R.C.M. 1947, which reads as follows:

**1-204.3. Cooperation with municipalities.** (1) The department may offer its engineering or other technical services, without charge, to a municipality desiring them in connection with the construction, maintenance, or operation or proposed construction, maintenance, or operation of an airport or restricted landing area.

(2) The department may render assistance in the acquisition, development, operation, or maintenance of airports owned, controlled, or operated by municipalities in this state, out of appropriations made by the legislature for that purpose.

(3) Municipalities may cooperate with the department in the development of aeronautics and aeronautics facilities in this state.

Section 8. There is a new section to be numbered 1-204.4, R.C.M. 1947, which reads as follows:

**1-204.4. Enforcement of aeronautics laws — investigations and hearings — limitations on use of reports.** (1) The department and every state, county, and municipal officer charged with the enforcement of state or municipal laws, shall enforce and assist in the enforcement of this title and of all rules adopted under it, and of all other laws of this state relating to aeronautics. In the aid of that enforcement, the department possesses general police powers. The department may also, in the name of the state, enforce this title and the rules adopted under it by injunction in the courts of this state.

(2) The department may hold investigations, inquiries, and hearings concerning matters covered by this title, by its orders and rules, and concerning accidents in aeronautics within this state. An officer or employee of the department designated to hold an investigation or hearing may administer oaths and affirmations; certify official acts; issue subpoenas; and compel the attendance and testimony of witnesses and the production of papers, books, and documents. In case of failure to comply with a subpoena or order issued under this title, the department may invoke the aid of a state court of general jurisdiction. The court may then order the witness to comply with the requirements of the subpoena or order, or to give evidence pertaining to the matter in question. A failure to obey the order of the court may be punished as a contempt.

(3) The reports of investigations or hearings may not be admitted in evidence or used for any purpose in any suit, action, or proceedings, growing out of a matter referred to in the investigation, hearing, or report, except in case of criminal or other proceedings instituted in behalf of the department or this state under this title and other laws of this state relating to aeronautics. An officer or employee of the department may not be required to testify to any facts ascertained in, or information gained by reason of his official capacity, or be required to testify as an expert witness in a suit, action, or proceeding involving an aircraft. The department may, in its discretion, make available to appropriate federal and state agencies information and material developed in the course of its hearings and investigations.

Section 9. Section 1-205, R.C.M. 1947, is amended to read as follows:

"1-205. **Federal aid.** (1) *The department may cooperate with the government of the United States, and any agency or department thereof, in the acquisition, construction, improvement, maintenance, and operation of airports and other air navigation facilities in this state, and may comply with the laws of the United States and any regulations made under those laws for the expenditure of federal moneys upon airports and other navigation facilities.*

(2) *The department may accept, receive, and receipt for federal moneys and other moneys, either public or private, for and in behalf of this state, or a municipality of this state, for the acquisition, construction, improvement, maintenance, and operation of airports and other air navigation facilities, whether the work is to be done by the state or by the municipalities, or jointly, aided by grants of aid from the United States, upon terms and conditions prescribed by the laws of the United States and any rules made under them. The department may act as agent of a municipality of this state upon the request of the municipality, in accepting, receiving, and receipting for moneys in its behalf for airports or other air navigation facility purposes, and in contracting for the acquisition, construction, improvement, maintenance, or operation of airports or other air navigation facilities, financed either in whole or in part by federal moneys. The governing body of a municipality may designate the department as its agent for those purposes and enter into an agreement with it prescribing the terms and conditions of the agency in accordance with federal laws and rules. Moneys paid by the United States government shall be retained by the state or paid to the municipalities under terms and conditions imposed by the United States government in making the grants.*

(3) *All contracts for the acquisition, construction, improvement, maintenance, and operation of airports, or other air navigation facilities made by the department, either as the agent of this state or as the agent of a municipality, shall be made under the laws of this state governing the making of like contracts by the state or by municipalities. However, where the acquisition, construction, improvement, maintenance, and operation of an airport, landing strip, or other air navigation facility is financed wholly or partially with federal moneys, the department, as agent of the state or of a municipality of the state, may let contracts in the manner prescribed by the federal authorities, acting under the laws of the United States, and any rules made under them.*

(4) *All moneys accepted for disbursement by the department under subsection (2) of this section shall be deposited in the state treasury, and, unless otherwise prescribed by the authority from which the money is received, kept in separate funds, designated according to the purposes for which the moneys were made available, and held by the state in trust for those purposes. All those moneys are appropriated for the purposes for which they were made available, to be spent in accordance with federal laws and regulations and with this title. The department may, whether acting for this state or as the agent of any of its municipalities, or when requested by the United States government or an agency or department of the United States, disburse the moneys for the designated purposes, but this does not preclude any other authorized method of disbursement."*

Section 10. Section 1-301, R.C.M. 1947, is amended to read as follows:

**"1-301. Regulation of aircraft, airmen, airports, and air instruction.** (1) In order to promote the general public interest and safety and to carry out the purposes of this *title*, the *department may*:

(a) *Require* the annual registration of federal licenses, permits, or certificates of civil aircraft engaged in air navigation within this state, of airmen engaged in aeronautics within this state, and of aeronautics instructors giving instruction in flying subjects, and *may* issue certificates of registration. *The* certificates of registration constitute licenses of *the* aircraft, airmen, and instructors for operations within this state to the extent permitted by the federal licenses, certificates, or permits so registered. *The department may* charge a fee for the registration of each federal license, certificate, or permit not exceeding one dollar (\$1). It may accept as evidence of the holding of a federal license, certificate, or permit the verified application of the owner of the aircraft, the airman, or the instructor. *The* application shall contain information *which* the *department may* by rule or order prescribe.

(b) *Register* aircraft repair shops, aircraft, aircraft parts and sales dealers, and other persons operating in aviation *and* license aircraft repair shops, aircraft, aircraft parts and dealers, and other persons operating in aviation, air schools, and aeronautics instructors giving instruction in ground subjects, in accordance with rules to be adopted by the *department*, and *may* annually renew *these* licenses. It may charge for the original licensing of aircraft repair shops, aircraft, aircraft parts and sales dealers, and other persons operating in aviation, air schools, and aeronautics instructors not more than one dollar (\$1) and for the renewal of *a* license not more than one dollar (\$1).

(c) *Approve* airport and restricted landing area sites and license airports, restricted landing areas, or other air navigation facilities, in accordance with rules adopted by the *department*, and *may* annually renew *these* licenses. Licenses granted under this section or under any prior law shall be annually renewed upon payment of the fee. *The department may not* charge for *approving* certificates of proposed property acquisition for airport or restricted landing area purposes. It may charge for the issuance *and annual renewal* of each license for an airport or restricted landing area not to exceed *one dollar* (\$1).

(d) *Temporarily* or permanently revoke *a* license or certificate of registration *issued for* an aircraft, airman, air school, or aeronautics instructor, upon notification by the civil aeronautics authority that it has revoked the license or certificate of *that* aircraft, airman, air school, or aeronautics instructor, giving reasons for *the* action.

(2) Except as provided in subsection (3) of this section, a person may not operate or cause or authorize to be operated a civil aircraft within this state unless *the* aircraft has an appropriate effective license, certificate, or permit issued by the United States government which has been registered with the *department* and *the* registration with the *department* is in force, and a person may not engage in aeronautics as an airman in this state unless he has from the *department* an effective certificate of registration of an appropriate effective airman's license, certificate, or permit issued by the United States government authorizing him to engage in the particular class of aeronautics in which he is engaged.

(3) The provisions of *subsections 1(b) and 1(d)* of this section *do not* apply to:

(a) An aircraft which has been licensed by a foreign country with which the United States has a reciprocal agreement covering the operations of *that* licensed aircraft;

(b) An aircraft which is owned by a nonresident of this state who is lawfully entitled to operate *the* aircraft in the state of his residence;

(c) An aircraft engaged principally in commercial flying constituting an act of interstate or foreign commerce;

(d) An airman operating military or public aircraft or *an* aircraft licensed by a foreign country with which the United States has a reciprocal agreement covering the operation of *that* licensed aircraft;

(e) *A person* operating model aircraft or a person piloting an aircraft which is equipped with fully functioning dual controls when a licensed instructor is in full charge of one set of *the* controls and *the* flight is solely for instruction or for the demonstration of *the* aircraft to a prospective purchaser;

(f) A nonresident operating aircraft in this state who is lawfully entitled to operate aircraft in the state of residence;

(g) An airman while operating or taking part in the operation of an aircraft engaged principally in commercial flying constituting an act of interstate or foreign commerce."

Section 11. Section 1-302, R.C.M. 1947, is amended to read as follows:

"1-302. **Exhibition of licenses and certificates.** The federal license, certificate, or permit, and the evidence of registration in this or another state, if any, required for an airman shall be kept in the personal possession of the airman when he is operating within this state and must be presented for inspection upon the demand of *a* passenger, *a* peace officer of this state, *an* authorized official or employee of the *department*, or *an* official, manager, or person in charge of *an* airport in this state upon which he *lands*, or upon the reasonable request of any other person. The federal aircraft license, certificate, or permit, and the evidence of registration in this or another state, if any, required for aircraft must be carried in every aircraft operating in this state at all times and must be conspicuously posted *in the aircraft* where it may readily be seen by passengers or inspectors and must be presented for inspection upon demand of *a* passenger, *a* peace officer of this state, *an* authorized official or employee of the *department*, or *an* official, manager, or person in charge of *an* airport in this state upon which it *lands*, or upon the reasonable request of any person."

Section 12. Section 1-303, R.C.M. 1947, is amended to read as follows:

"1-303. **Air instruction without license or certificate unlawful.** It is unlawful for *a* person to operate an air school or to give instructions in flying or ground subjects in this state unless *that* person, if an air school or aeronautics instructor in ground subjects, is the holder of an

annual license issued by the *department*, or, if an aeronautics instructor in flying subjects, has an appropriate effective license, certificate, or permit issued by the United States government authorizing him to engage in the particular class of flight instruction in which he is engaged, which has been registered with the *department* and the registration with the *department* is in full force."

Section 13. Section 1-304, R.C.M. 1947, is amended to read as follows:

**"1-304. Licensing of airports and other air navigation facilities.** All proposed airports, restricted landing areas, and other air navigation facilities shall be first licensed by the *department* before they are used or operated. A municipality or person acquiring property for the purpose of constructing or establishing an airport or restricted landing area shall, prior to *that* acquisition, *apply* to the *department* for a certificate of approval of the site selected and the general purpose for which the property is to be acquired, to ensure that the property and its use conform to minimum standards of safety and serve *the* public interest. It is unlawful for *a* municipality or *an* officer or employee of *it*, or for any person, to operate an airport, restricted landing area, or other air navigation facility for which an annual license has not been issued by the *department*."

Section 14. Section 1-305, R.C.M. 1947, is amended to read as follows:

**"1-305. Hearings on applications for certificates and licenses.** When the *department* makes an order granting or denying a certificate of approval of an airport or a restricted landing area, or an original license to use or operate an airport, restricted landing area, or other air navigation facility, and the applicant or any interested municipality, within fifteen days after notice of the order has been sent to the applicant by registered mail, demands a public hearing, or when the *department* desires to hold a public hearing before making *the* order, a public hearing in relation to *its* action shall be held in the municipality applying for the certificate of approval or license, or in case the application was made by anyone other than a municipality, at the county seat of the county in which the proposed airport, restricted landing area, or other air navigation facility is proposed to be situated. At the hearing parties in interest and other persons shall have an opportunity to be heard. Notice of the hearing shall be published by the *department* in a newspaper of general circulation in the county in which the hearing is to be held, at least twice, the first publication to be at least fifteen days prior to the date of hearing. After a proper and timely demand has been made the order shall be stayed until after the hearing, when the *department* may affirm, modify, or reverse it, or make a new order. If no hearing is demanded as provided in *this* section, the order becomes effective upon the expiration of the time permitted for making a demand. Where a certificate of approval of an airport or restricted landing area has been issued by the *department*, it may grant a license for operation and use, and no hearing may be demanded."

Section 15. Section 1-306, R.C.M. 1947, is amended to read as follows:

**"1-306. Standards for issuing certificates of approval and licenses.** In determining whether to issue a certificate of approval or license for the use or operation of a proposed airport or restricted landing

area, the *department* shall take into consideration its proposed location, size, and layout, the relationship of the proposed airport or restricted landing area to a comprehensive plan for state-wide and nation-wide development, whether there are safe areas available for expansion purposes, whether the adjoining area is free from obstructions based on a proper glide ratio, the nature of the terrain, the nature of the uses to which the proposed airport or restricted landing area will be put, and the possibilities for future development."

Section 16. Section 1-308, R.C.M. 1947, is amended to read as follows:

"1-308. **Revocation of certificate of approval and licenses.** The *department* may temporarily or permanently revoke a certificate of approval or license issued by it when it *determines* that an airport, restricted landing area, or other navigation facilities are not being maintained or used in accordance with the provisions of this *title* and the rules *adopted under it*."

Section 17. Section 1-310, R.C.M. 1947, is amended to read as follows:

"1-310. **Orders of department.** (1) *Before the department* refuses to issue a certificate of approval, *issue a license, or renew a license* for an airport, restricted landing area, or other air navigation facility, or refuses to permit the registration of a license, certificate, or permit, or refuses to grant a license to an air school or to an aeronautics instructor in ground subjects, or *before it issues an order* requiring certain things to be done, or revoking a license or certificate, it shall set forth its reasons *for its action* and shall state the requirements to be met before *the* approval will be given, registration permitted, license granted or order modified or changed. An order made by the *department under this title* shall be served upon the interested persons by registered mail or in person. A *person* charged with the duty of enforcing this *title* may inspect and examine at reasonable hours any premises, buildings, or other structures where airports, restricted landing areas, air schools, flying clubs, or other air navigation facilities or aeronautical activities are operated or carried on.

(2) A person aggrieved by an order of the *department*, or by the granting or denial of a license, certificate, or registration may, within ten (10) days after *receiving notice of the department's order or action*, appeal from *the order or action* to the district court of the county in which *the* person resides or the county in which any property affected by the order *or action* is located. *The appellant shall file* with the clerk of the district court to which *the* appeal is taken a notice of appeal which shall state the substance of the order *or action* appealed from, the date of the order *or action*, and that *the* person appeals to the court from *it*. *The appellant shall serve* a copy of *the* notice of appeal upon the *department*. The order of filing and service is immaterial. *The* appeal shall be *heard* not less than ten days nor more than thirty days after the filing of *the* notice of appeal unless the judge, for sufficient cause resulting from press of business or other reason, is unable to hear *the* appeal within *that* time. In that event, *the* hearing may be deferred until *it* can be heard by the court. *The* appeal may be heard without formal pleadings."

Section 18. Section 1-311, R.C.M. 1947, is amended to read as follows:

"1-311. **"Commercial air operator" defined.** *Unless the context requires otherwise, in this chapter "commercial air operator" means any person owning, controlling, operating, or managing aircraft for any commercial purpose for compensation.*"

Section 19. Section 1-314, R.C.M. 1947, is amended to read as follows:

"1-314. **Commercial air operators to procure insurance.** The *department* shall require every commercial air operator to procure, and continue in effect as long as the commercial air operator continues to offer its services for compensation, adequate protection against liability imposed by law upon a commercial air operator for the payment of damages for personal bodily injuries, including death resulting from those injuries, and property damage as a result of an accident."

Section 20. Section 1-315, R.C.M. 1947, is amended to read as follows:

"1-315. **Department to set amount of insurance.** The *department* shall, after a public hearing, set the amount of liability insurance, required by section 1-314, which is reasonably necessary to provide adequate compensation for damage incurred through an accident involving a commercial air operator."

Section 21. Section 1-316, R.C.M. 1947, is amended to read as follows:

"1-316. **Submission of evidence of insurance to department.** (1) The protection required under section 1-314, covering each aircraft used or to be used in commercial operations for compensation, *shall be evidenced by providing one of the following to the department:*

(a) A copy of the policy of insurance, issued by a company authorized to write *the* insurance in the state;

(b) A bond of a surety company authorized to write surety bonds in the state; or

(c) *Evidence* of the qualification of the commercial air operator as a self-insurer as may be authorized by the *department*.

(2) *With the consent of the department a copy of an insurance policy, certified by the company issuing it to be a true copy of the original policy, or a photostatic copy of the original policy, or an abstract of the provisions of the policy, or a certificate of insurance issued by the company issuing the policy, may be filed with the department instead of the original or a duplicate or counterpart of the policy.*

(3) *The department may accept policies of insurance written by unauthorized insurers, if the policies of insurance meet the rules adopted by the department."*

Section 22. Section 1-318, R.C.M. 1947, is amended to read as follows:

"1-318. **Continuation of insurance — notice to department upon cancellation.** The protection against liability shall be continued in effect as long as the commercial air operator continues to offer his services for compensation. The policy of insurance or surety bond shall not be cancelable on less than thirty (30) days' written notice to the *department*, except in the event of cessation of operations as a commercial air operator."

Section 23. Section 1-319, R.C.M. 1947, is amended to read as follows:



"1-319. **Department to establish rules.** The *department* may establish rules necessary to enforce *sections 1-314 through 1-321.*"

Section 24. Section 1-320, R.C.M. 1947, is amended to read as follows:

"1-320. **Violations a misdemeanor — acceptance of policies written by unauthorized insurers.** A commercial air operator who knowingly refuses or fails to procure protection against liability, as required by section 1-314 *is* guilty of a misdemeanor, and each day during which *that* commercial air operator *continues* in default *constitutes* a separate offense."

Section 25. Section 1-322, R.C.M. 1947, is amended to read as follows:

"1-322. **Operation of sections — exceptions.** (1) *No air carrier may operate aircraft except in accordance with sections 1-322 through 1-324.*

(2) *Sections 1-322 through 1-324 do not apply to:*

(a) common carriers of passengers or freight by aircraft *which* operate within this state *under* a certificate of public convenience and necessity issued by the federal government; *or*

(b) *aircraft operators, who carry passengers for hire, who are commonly known as "taxi operators" or "charter operators," who operate on an occasional or contract basis, and who do not operate as common carriers between terminal points, including intermediate points, if any.*"

Section 26. There is a new section to be numbered 1-322.1, R.C.M. 1947, which reads as follows:

1-322.1. **Definitions.** In sections 1-322 through 1-324, unless the context requires otherwise: (1) The general definitions in section 1-102 apply.

(2) "Air carrier" means a person or corporation owning, controlling, operating, or managing aircraft as a scheduled common carrier of passengers or freight for compensation within this state.

(3) "Board" means the board of aeronautics provided for in section 82A-905.

Section 27. Section 1-323, R.C.M. 1947, is amended to read as follows:

"1-323. **Regulatory powers of board of aeronautics — rates — reports — rules.** (1) *The board of aeronautics may:*

(a) Supervise and regulate every air carrier in those matters affecting ticketing, flight reservations, passenger baggage, advertising, passenger convenience and comfort, and transportation of freight;

(b) After notice to all interested parties and the public, and after hearing, fix the rates, fares, charges, classifications, and rules of each carrier;

(c) Regulate the accounts of each carrier, and require the filing of annual and other reports and of other data by *the* carriers;

(d) By general order or otherwise, *adopt* rules applicable to all air carriers. The *board*, in the exercise of the jurisdiction conferred upon it, may

make orders and *adopt* rules affecting air carriers, notwithstanding the provisions of any ordinance or permit of a town, city, city and county, or county and in case of conflict the order or rule of the *board prevails*.

*(2) The board shall act in an advisory capacity to the department in matters pertaining to aeronautics."*

Section 28. There is a new section to be numbered 1-323.1, R.C.M. 1947, which reads as follows:

**1-323.1. Certificates of public convenience and necessity — requirement — issuance.** (1) No air carrier may engage in an operation in this state without first obtaining from the board a certificate of public convenience and necessity authorizing the operation.

(2) An applicant shall submit his written verified application to the board. The application shall be in a form, contain the information, and be accompanied by proof of service upon all air carriers with which the proposed service is likely to compete and upon other interested parties as the board requires. Each application shall be accompanied by a fee of one hundred fifty dollars (\$150).

(3) In awarding certificates of public convenience and necessity, the board shall consider the business experience of the particular air carrier in the field of air operations, the financial stability of the carrier, the insurance coverage of the carrier, the type of aircraft which the carrier would employ, proposed routes and minimum schedules to be established, whether the carrier could economically give adequate service to the communities involved, the need for the service, and any other factors which may affect the public interest.

(4) The board may, after notice to the interested parties and the public, and after hearing, issue the certificate requested. The board may, after like notice and hearing, refuse to issue the certificate. The board may, after like notice and hearing, issue the certificate for the partial exercise only of the privilege sought. The board may attach to the exercise of the rights granted by the certificate terms and conditions as, in its judgment, the public convenience and necessity require.

Section 29. There is a new section to be numbered 1-323.2, R.C.M. 1947, which reads as follows:

**1-323.2. Certificates of public convenience and necessity — transfer and combination.** (1) The holder of a certificate of public convenience and necessity must apply to the board for permission to sell, mortgage, lease, assign, transfer, or otherwise encumber a certificate. A fee of one hundred fifty dollars (\$150) shall be paid to the department for filing each application to sell, mortgage, lease, assign, transfer, or otherwise encumber a certificate.

(2) The board may, after notice and hearing, approve the application, or refuse to approve it, and may approve it under those terms and conditions which, in its judgment, the public convenience and necessity require.

(3) Without the express approval of the board, no certificate of public convenience and necessity issued to one air carrier may be combined,

united, or consolidated with a certificate issued to or possessed by another carrier, so as to permit through service between any point served by one carrier and any point served by the other carrier.

Section 30. There is a new section to be numbered 1-323.3, R.C.M. 1947, which reads as follows:

**1-323.3. Certificates of public convenience and necessity — suspension — amendment—revocation.** (1) The board may suspend and the department shall enforce the suspension of certificates of public convenience and necessity, issued by the board, upon a finding of an agency of the federal government that an air carrier is operating in violation of a federal safety law or regulation.

(2) For any other good cause, the board may, upon notice to the holder of a certificate and opportunity to be heard, suspend, revoke, alter, or amend a certificate.

Section 31. There is a new section to be numbered 1-323.4, R.C.M. 1947, which reads as follows:

**1-323.4. Establishment of through and joint rates —discontinuance of service.** (1) An air carrier may, upon prior written approval from the board after notice to all interested parties and the public, and after hearing, establish through rates and joint rates, charges, and classifications between all points served by it under certificates or operative rights issued to or possessed by it.

(2) No air carrier may discontinue operations to a point without authority of the board, unless the operations are unprofitable. Unprofitable operations may be discontinued upon thirty (30) days' notice to the board, and to other persons the board may require, unless within the thirty (30) day period the board, after hearing, finds that the operation is not unprofitable and orders its continuance.

Section 32. There is a new section to be numbered 1-323.5, R.C.M. 1947, which reads as follows:

**1-323.5. Insurance.** The board may, upon its motion, or upon application of an interested party, and after hearing, require an air carrier to procure and maintain insurance in amounts and upon terms as the board may determine. The board may suspend the certificate of an air carrier for failure to comply with the insurance regulations established under this section.

Section 33. There is a new section to be numbered 1-323.6, R.C.M. 1947, which reads as follows:

**1-323.6. Violations — enforcement — appeals and judicial determinations.** (1) When a complaint has been filed with the board alleging that an aircraft is being operated without a certificate of public convenience and necessity, or when the board believes that sections 1-322 through 1-324 are being violated, the board shall investigate the operations and may, after a hearing, make its order requiring the operator of the aircraft to stop an operation in violation of this section. The department shall enforce compliance with the order by means of powers vested in it by law.

(2) The district court has jurisdiction to enforce, by proper decree, injunction, or order, the rates, classifications, rules, and orders made by the board. The proceeding shall be by equitable action in the name of the state, and shall be instituted by the attorney general or county attorney, when advised by the department that an air carrier is violating or refusing to comply with a rule, order, rate, or classification made by the board and applicable to that air carrier. The proceedings shall have precedence over all other business in the district courts, except criminal business.

(3) In an action the burden of proof rests upon the defendant, who must show by clear and satisfactory evidence that the rule, order, rate, or classification involved is unreasonable and unjust. If the court decides that the rule, order, rate, or classification is not unreasonable or unjust, and that in refusing compliance the air carrier is failing to fulfill a duty, debt, or obligation, the court shall decree a mandatory and permanent injunction compelling compliance with the rule, order, rate, or classification by the defendant, and its officers, agents, servants, and employees, and may grant other relief which may be considered just and proper. A violation of the decree makes the defendant and officer, agent, servant or employee of the defendant, who is in any manner instrumental in the violation, guilty of contempt, punishable by a fine not exceeding one thousand dollars (\$1000) for each offense, or by imprisonment of that person until he sufficiently purges himself. The decree remains in effect until the rule, order, rate, or classification is modified or vacated by the board.

(4) An air carrier may bring an action in the district court of the county where the principal office or place of business is situated, or in a county where a classification, rate, toll, charge, rule, or order of the board applies, against the board as defendant, to determine whether the classification, rate, toll, charge, rule, or order made or established by the board is just and reasonable. In an action, hearing, or proceeding in any court, the classification, rate, toll, charge, rule, and order made and established by the board shall prima facie be considered just, reasonable, and proper.

(5) Appeals taken to the supreme court from the judgment of a district court under this section have precedence over all other business, except criminal business and original proceedings in that court, and shall be heard and determined as are appeals in civil actions.

(6) All costs and expenses incurred in the hearing, trial, or appeal of an action brought under this section shall be determined and assessed in a manner the court considers just and equitable.

Section 34. Section 1-324, R.C.M. 1947, is amended to read as follows:

"1-324. **Publication of notice.** Notice as required by *sections 1-323 through 1-323.6* shall be given by publication once a week for three (3) successive weeks in a newspaper of general circulation in the county in which the hearing is to be held and by personal service by mailing to all interested parties. However, in the case of the hearings required by *sections 1-323 and 1-323.4(1)*, if no written protest or written request that the hearing be held is received by the *board* within five (5) days after

the date of the last publication of *the* notice, the *board* may, in its discretion, vacate *the* hearing and establish the rates, fares, charges, classifications, and rules of the air carrier without hearing. The notice required by *this section* shall state that the *board* may vacate the hearing unless a written protest or request that the hearing be held is received by the *board* as required by *this section*."

Section 35. Section 1-401, R.C.M. 1947, is amended to read as follows:

"1-401. **Acquisition and operation of state airports.** (1) The *department* may, on behalf of and in the name of this state, acquire by purchase, gift, devise, lease, condemnation proceedings, or otherwise, property real or personal, for the purpose of establishing and constructing airports, restricted landing areas, and other air navigation facilities, and acquire in like manner, own, control, establish, construct, enlarge, improve, maintain, equip, operate, regulate, and police airports, restricted landing areas, and other air navigation facilities either within or *outside* this state; make, prior to acquisition, investigations, surveys, and plans; erect, install, construct, and maintain at *those* airports facilities for the servicing of aircraft and for the comfort and accommodation of air travelers, and dispose of any property, airport, restricted landing area, or any other air navigation facility, by sale, lease, or otherwise, in accordance with the laws of this state governing the disposition of other like property of the state. It may not, however, acquire or take over *an* airport, restricted landing area, or other air navigation facility owned or controlled by a municipality of this state without the consent of *the* municipality. It may erect, equip, operate, and maintain on *an* airport, buildings and equipment necessary and proper to establish, maintain, and conduct *the* airport and air navigation facilities connected *with it*.

(2) Where necessary, in order to provide unobstructed air space for the landing and taking off of aircraft utilizing airports and restricted landing areas acquired or operated under the provisions of *this title*, it *may* acquire, in the manner provided for the acquisition of property for airport purposes, easements through or other interests in air space over land or water, interests in airport hazards outside the boundaries of the airports or restricted landing areas, and such other airport protection privileges as are necessary to ensure safe approaches to the landing areas of airports and restricted landing areas, and the safe and efficient operation of *them*. It *may* also acquire in the same manner the right or easement, for a term of years or perpetually, to place or maintain suitable marks for the daytime marking and suitable lights for the nighttime marking of airport hazards, including the right of ingress and egress to or from *the* airport hazards for the purpose of maintaining and repairing *the* lights and marks. This authority *does* not limit the right, power, or authority of the state or a municipality to zone property adjacent to *an* airport or restricted landing area pursuant to a law of this state.

(3) It may engage in all *those* activities jointly with the United States, other states, and with municipalities or other agencies of this state.

(4) It may exercise the right of eminent domain, in the name of the state, in the manner provided by the laws of this state for the acquisition of real property for public purposes, for the purpose of acquiring any prop-

erty which it is authorized to acquire. The acquisition of property for any of *those* purposes is a public use.

(5) It may lease for a term not exceeding ten (10) years, airports, or other air navigation facilities or real property acquired or set apart for airport purposes, to private parties, a municipal or state government, or the national government, or a department of either of *them*, for operation; and may lease or assign for a term not exceeding ten (10) years to private parties, a municipal or state government or the national government, or a department of either for operation or use consistent with the purposes of this *title*, space, area, improvements, or equipment on *those* airports; may sell any part of *those* airports, other air navigation facilities or real property to a municipal or state government, or to the United States or a department or instrumentality thereof, for aeronautical purposes or purposes incidental thereto; and may confer the privilege of concessions of supplying upon the airports goods, commodities, things, services and facilities. *However*, in each case in so doing the public *may not be* deprived of its rightful, equal, and uniform use thereof.

(6) It *may* determine the charges or rental for the use of state airports, and the charges for service or accommodations, under its control and the terms and conditions under which *the* properties may be used. *However*, the public *may not be* deprived of its rightful, equal, and uniform use of *the* property. Charges shall be reasonable and uniform for the same class of service and established with due regard to the property and improvements used and the expenses of operation to the state. The state *has* and the *department* may enforce agisters' liens, as provided by law, for *repair*, improvement, storage, or care of any personal property."

Section 36. Section 1-501, R.C.M. 1947, is amended to read as follows:

"1-501. **Receipt and disbursement of moneys.** (1) All costs and expenses of administering this *title*, including the salaries of employees of the *department of intergovernmental relations engaged in functions pertaining to aeronautics*, the expenses of members of the *board of aeronautics*, and all other disbursements necessary to carry out the purposes of this *title*, shall be paid out of the following revenues: All gifts and all legislative appropriations to the *department for aeronautics*; all moneys received from any branch or department of the federal government, or from other sources, for the purposes mentioned in this *title* or for the furtherance of aeronautics generally in this state. All such moneys shall be deposited in the state treasury to the credit of the *department*.

(2) There shall be deposited in the earmarked revenue fund to the credit of the *department* the proceeds of one cent (1¢) per gallon out of the amount per gallon of gasoline license tax imposed by the laws of *this state* upon purchases of gasoline used for the operation of aircraft. *Moneys so deposited shall be spent by the department for the sole purpose of carrying out its functions pertaining to aeronautics.*

(3) No part of *the* one cent (1¢) per gallon of gasoline license tax imposed by the laws of *this state* on gasoline purchased and used for the operation of *airplanes* or aircraft *may be refunded.*"

Section 37. Section 1-502, R.C.M. 1947, is amended to read as follows:

**"1-502. Aeronautics functions governmental — no liability for torts.** (1) The acquisition of lands for establishing airports or other air navigation facilities; the acquisition of airport protection privileges; the acquisition, establishment, construction, enlargement, improvement, maintenance, equipment, and operation of airports and other air navigation facilities whether by the state separately or jointly with a municipality; the assistance of this state in *that* acquisition, establishment, construction, enlargement, improvement, maintenance, equipment, and operation; and the exercise of any other powers granted to the *department* are public and governmental functions, exercised for a public purpose, and matters of public necessity, and such lands and other property and privileges acquired and used by the state in the manner and for the purposes enumerated in this *title* are acquired and used for public and governmental purposes and as a matter of public necessity.

(2) No suit in tort *may* be brought or maintained against the state or any municipality *of the state*, or *their* officers, agents, servants, or employees, on account of *an* act done in or about the construction, maintenance, enlargement, operation, superintendence, or management of *an* airport or other air navigation facility."

Section 38. Section 1-710, R.C.M. 1947, is amended to read as follows:

**"1-710. Definitions.** *Unless the context requires otherwise, in sections 1-710 through 1-723:*

(1) *The definitions in section 1-102 apply.*

(2) "Airport hazard area" means any area of land or water upon which an airport hazard might be established if not prevented as provided in this *title*.

(3) "Structure" means any object constructed or installed by man, including, but without limitation, buildings, towers, smokestacks, and overhead transmission lines.

(4) "Tree" means any object of natural growth."

Section 39. Section 1-807, R.C.M. 1947, is amended to read as follows:

**"1-807. Department of highways may assist municipalities in constructing roads to airports.** The *department of highways may*, upon written application of the governing body of *a municipality*, assist *the municipality* in the location, establishment, construction, reconstruction, maintenance, and improvement of highways and roads to and from municipal airports and field development *of them*. The *department of highways* shall lend its equipment, machinery, technical services and supervision to the *municipality*, under agreements made with each *municipality*."

Section 40. Section 1-808, R.C.M. 1947, is amended to read as follows:

**"1-808. Definitions.** *Unless the context requires otherwise, in sections 1-808 through 1-828 the definitions in section 1-102 apply.*"

Section 41. Section 1-818, R.C.M. 1947, is amended to read as follows:

"1-818. **Federal and state aid.** (1) A municipality *may* accept, receive, receipt for, disburse, and *spend* federal and state moneys and other moneys, public or private, made available by grant or loan or both to accomplish any of the purposes of *sections 1-808 through 1-828*. All federal moneys accepted under this section shall be accepted and *spent* by the municipality upon terms and conditions prescribed by the United States and consistent with state law. All state moneys accepted under this section shall be accepted and *spent* by the municipality upon terms and conditions prescribed by the state. Unless otherwise prescribed by the agency from which *the* moneys were received, the chief financial officer of the municipality shall, on its behalf deposit *and keep* all moneys received pursuant to this section in separate funds designated according to the purposes for which the moneys were made available, in trust for *those* purposes.

(2) No application *may* be made by a municipality for federal aid, as provided in *this section*, unless the "project application," as defined in the Federal Airport Act of 1946 and regulations of the administrator of civil aeronautics, *are* first approved by the *department*.

(3) A municipality *may*, with the approval and consent of the *department*, designate the *department* as its agent to accept, receive, receipt for, and disburse federal and state moneys, and other moneys, public or private, made available by grant or loan or both to accomplish any of the purposes of *sections 1-808 through 1-828*. A municipality *may*, with the consent of the *department*, designate the *department* as its agent in contracting for and supervising the planning, acquisition, development, construction, improvement, or equipment of an airport or other air navigation facility. All contracts made, let, or awarded by the *department* acting as agent of a municipality under this section, shall be made, let, or awarded pursuant to the laws governing the making of contracts by or on behalf of the state. The municipality may enter into an agreement with the *department*, providing for payment to the *department* for services rendered as agent and prescribing the terms and conditions of the agency, in accordance with terms and conditions prescribed by the United States, if federal money is involved, and in accordance with applicable state law. All federal moneys accepted under this section by the *department* shall be accepted and transferred or *spent* by the *department* upon terms and conditions prescribed by the United States. All moneys received by the *department* under this subsection shall be deposited in the state treasury, and unless otherwise prescribed by the agency from which *the* moneys were received, shall be kept in separate funds designated according to the purposes for which the moneys were made available, and held by the state in trust for *those* purposes."

Section 42. Section 1-901, R.C.M. 1947, is amended to read as follows:

"1-901. **Definitions.** Unless the context requires otherwise, in this chapter:

(1) *The definitions in section 1-102 apply.*

(2) "Municipal airport authority" or "municipal authority" means a municipal airport authority created under section 1-904.

(3) "Regional airport authority" or "regional authority" means a regional airport authority created under section 1-905.



(4) "Airport authority" or "authority" *means* a regional airport authority or municipal airport authority created *under* this chapter, and the governing body of a municipality which has determined to exercise the powers of a municipal airport authority *under* section 1-904.

(5) "Governing body" *means* bodies and boards by *whatever* names they are known, having charge of finances and management of a municipality.

(6) "Bonds" *means* bonds, notes, interim certificates, debentures, or similar obligations issued by an authority *under* this chapter.

(7) "Real property" *means* lands, structures, buildings, and interests in land, including lands under water and riparian rights, and all things and rights usually included within the term real property, including not only fee simple absolute but also all lesser interests, such as easements, rights of way, uses, leases, licenses, and all other incorporeal hereditaments and every estate, interest, or right, legal or equitable, pertaining to real property.

Section 43. Section 1-902, R.C.M. 1947, is amended to read as follows:

**"1-902. Department may exercise powers of airport authority—exceptions.** The *department* shall have all powers of an airport authority, except powers to certify or levy taxes or issue bonds, for constructing and operating public airports or landing fields near international border ports of entry, and near state or national parks or near or in recreational areas as the *department* may determine to be in the public interest."

Section 44. Section 1-903, R.C.M. 1947, is amended to read as follows:

**"1-903. Airport operation and income.** The *department* shall have operational control of airports constructed under the provisions of section 1-902 and may provide for the imposition of landing fees, granting of fuel and service concessions, or the lease of portions of the premises for other related airport services or for purposes not inconsistent with the use of the premises for airport purposes. All income from the operation of such airports shall be deposited in the state treasury in a special operating fund to be known as the airport operating fund. All expenditures from such fund shall be within the limits of legislative appropriations and shall be made upon vouchers, signed and approved by the director of the *department*."

Section 45. Section 1-915, R.C.M. 1947, is amended to read as follows:

**"1-915. Federal and state aid.** (1) An authority *may* accept, receive, receipt for, and *spend* federal and state moneys and other moneys, public or private, made available by grant or loan, to accomplish any of the purposes of this chapter. All federal moneys accepted under this section shall be accepted and *spent* by the authority upon terms and conditions prescribed by the United States and consistent with state law. *All* state moneys accepted under this section shall be accepted and *spent* by the authority upon terms and conditions prescribed by the state.

(2) An authority *may* designate the *department* as its agent to accept, receive, receipt for, and disburse federal and state moneys, and other moneys, public or private, made available by grant or loan, to accomplish

in whole or in part, any of the purposes of this chapter; and *may* designate the *department* as its agent in contracting for and supervising the planning, acquisition, development, construction, improvement, maintenance, equipment, or operation of any airport or other air navigation facility. An authority may enter into an agreement with the *department* prescribing the terms and conditions of the agency in accordance with terms and conditions prescribed by the United States, if federal money is involved, and in accordance with the applicable laws of this state. All federal moneys accepted under this section by the *department* shall be accepted and transferred or *spent* by the *department* upon terms and conditions prescribed by the United States. All moneys received by the *department* under this subsection shall be deposited in the state treasury, and unless otherwise prescribed by the agency from which the moneys were received, shall be kept in separate funds designated according to the purposes for which the moneys were made available, and held by the state in trust for *those* purposes."

Section 46. Section 6-205, R.C.M. 1947, is amended to read as follows:

"6-205. **Department of intergovernmental relations to determine adequacy of amount.** The amount for which a county officer or employer or group of officers or employees shall be bonded *is* subject to the supervision of the *department of intergovernmental relations*. If the *department of intergovernmental relations* determines that the amount of the bond is inadequate, *it* may require the board of county commissioners to purchase an adequate bond."

Section 47. Section 6-603, R.C.M. 1947, is amended to read as follows:

"6-603. **Determination of adequacy of bond by department of intergovernmental relations.** The amount for which a city or town officer or employee or group of officers or employees shall be bonded *is* subject to the supervision of the *department of intergovernmental relations*. If the *department of intergovernmental relations* determines that the amount of the bond is inadequate *it* may require the city or town council or commission to purchase an adequate bond."

Section 48. Section 11-806, R.C.M. 1947, is amended to read as follows:

"11-806. **Financial statement of city or town — contents — copies, to whom furnished.** (1) Within sixty (60) days after the close of each fiscal year the city or town clerk of each city and town must make out, in duplicate, a complete statement of the financial condition of the city or town for *that* fiscal year, showing:

(a) The indebtedness of the city or town, funded and floating; the amount of each class of indebtedness; and the amount of money in the treasury subject to the payment of each class of indebtedness;

(b) The amount of money received from taxes upon real and personal property;

(c) The amount of money received from fines, penalties, and forfeitures;

(d) The amount of money received from licenses;

(e) The amount of money received from all other sources, each source and the amount received *from it* being shown separately;

(f) For each fund the amount of money, if any, on hand at the beginning of *the* fiscal year, the amount received and the amount paid out during *the* fiscal year. The amount of money paid out must be deducted from the *total* of *the* money on hand at the beginning of the fiscal year and *the* money received during *the* year, and a balance must be struck for each fund.

(g) A concise description of all property owned by the city or town with an approximate estimate of the value of *it*;

(h) The rates of taxation and purposes for which *taxes were* levied during *the* fiscal year;

(i) *Other information which* may be required by the *department of intergovernmental relations*.

(2) The forms on which *the* statement shall be made shall be prescribed by the *department of intergovernmental relations*.

(3) The city or town clerk must, not later than August 31 following the close of each fiscal year, transmit one copy of *the* statement to the *department of intergovernmental relations*, and must present the other copy to the city or town council or commission at *its* first regular meeting in September.

(4) If *a* city or town clerk *fails* to file a copy of *the* statement with the *department of intergovernmental relations* within the time specified, the *department of intergovernmental relations*, without delay, *shall* examine the books, records, and accounts of *the* city or town. *The department of intergovernmental relations shall make from its examination a statement of the financial condition of the city or town for the preceding fiscal year in the manner it should have been made by the city or town clerk. The examination shall be considered a special examination under the provisions of section 82-4504, and all of the provisions of section 82-4504 apply to it.*

Section 49. Section 11-1403, R.C.M. 1947, is amended to read as follows:

**"11-1403. Estimates of revenues and disbursements to be filed by officers—forms—penalty for failure to file.** (1) *Before July 1* of each year the clerk of each city shall notify in writing each official in charge of an office, department, service, or institution of the municipality to file with *the* clerk, before July 10, detailed and itemized estimates, both of the probable revenues from sources other than taxation, and of all expenditures required by *the* office, department, service, or institution for the current fiscal year. The council shall submit to the clerk the estimate of expenditures for all purposes for *the* council. The mayor of the municipality shall submit to the clerk a detailed estimate showing the amount to be appropriated from funds belonging to the municipality to defray the municipality's portion of the cost of making improvements in special improvement districts, and of maintaining *them*, and of installing lighting systems in special lighting districts, and maintaining *them*. *There may*

not be included in *the* estimate, nor in either the preliminary or final budget of a municipality, any part of *that* cost which is to be paid by special assessments against the property within *the* districts, or any part of the cost in sprinkling districts which is to be defrayed by special assessments against the property *in the sprinkling districts*.

(2) The council shall also submit to the clerk detailed estimates of all expenditures for construction or improvement purposes proposed to be made from the proceeds of bond issues not yet authorized and from the proceeds of tax levies which are required to be submitted to and approved at an election to be held.

(3) The estimates required in this section shall be submitted on forms provided by the clerk, and prescribed by the *department of intergovernmental relations*, and may only be varied or departed from with permission and approval of *the department of intergovernmental relations*. The city treasurer shall prepare the estimates for interest and debt reduction. The clerk shall prepare all other estimates which properly *fall* within the duties of his office.

(4) *Each of the officials shall file the estimates within the time and in the manner provided in the form and notice, and the clerk shall deduct and withhold, as a penalty, from the salary or compensation of each official failing or refusing to file the estimates, the sum of ten dollars (\$10) for each day of delay. The total penalty against an official may not exceed fifty dollars (\$50) per year. In the absence or disability of an official the duties required in this section devolve upon the official or employee in charge of the office, department, service, or institution for the time being. The notice shall contain a copy of this penalty clause.*

Section 50. Section 11-1404, R.C.M. 1947, is amended to read as follows:

**"11-1404. Tabulation by clerk of expenditure program — classifications, items included in.** (1) From estimates of *revenue and disbursements* the clerk shall prepare a tabulation showing the complete expenditure program of the municipality for the current fiscal year, and the sources of revenue by which it is to be financed. *The* tabulation shall set forth the estimated receipts from all sources other than taxation for each office, department, service, or institution for the current fiscal year, the actual receipts for the last completed fiscal year, the surplus or unencumbered treasury balances at the close of *that* last fiscal year, and the amount necessary to be raised by taxation; the estimated expenditure for each office, department, service, or institution for the current fiscal year, the actual expenditures for the last completed fiscal year, and all contracts or other obligations which will affect the current year revenues.

(2) *The* estimates, appropriations, and expenditures shall be classified as:

- (a) salaries and wages;
- (b) maintenance and operation;
- (c) capital outlay;
- (d) interest and debt redemption;
- (e) miscellaneous; and

(f) expenditures proposed to be made from bond issues not yet authorized, or from the proceeds of a tax levy or levies which are required to be submitted to and approved at an election to be held *later*.

(3) Within the class of "salaries and wages" each salary shall be set forth separately together with the title or position of the recipient. *An* unitemized appropriation may be made to cover the expenses of special deputies or assistants in *an* office where the services of *the* special deputies or assistants may be required during a part of the fiscal year only. Wages for day labor may be given in totals by designating the general purpose or object for which the expenditure is to be made but the proposed rate per *day* for each class or kind of labor shall be set forth. Expenditures under the general class of "maintenance and operation" shall be classified according to a standard classification to be established by the *department of intergovernmental relations*. Expenditures for "capital outlay" shall set forth and describe each object of expenditure separately. Under the general class of "interest and debt redemption" proposed expenditures for interest and for redemption of principal shall be set forth separately for each series or issue of bonds, and warrant interest and redemption requirements shall be set forth in a similar manner. Under the general class of "miscellaneous" expenditures for all purposes not listed in, or which cannot properly be assigned to any of the general classes, shall be set forth and itemized in detail.

(4) The total amount of emergency warrants issued during the preceding fiscal year shall be set forth with the amount issued for each emergency and the amount issued against each fund."

Section 51. Section 11-1406, R.C.M. 1947, is amended to read as follows:

**"11-1406. Hearings on budget — adoption — fixing of tax levy.**

(1) On the Wednesday preceding the second Monday in August the council shall meet at the time and place designated in the notice provided in section 11-1405, at which time any taxpayer may appear and be heard for or against any part of *the* budget. *The* hearing shall be continued from day to day and shall be concluded and the budget finally approved and adopted on the second Monday in August and prior to the fixing of the tax levies by *the* council. The council *may* call in the official in charge of *an* office, department, service, or institution, at the time the estimates for their respective offices are under consideration, for examination concerning *the* estimates. *The* official shall be called in by *the* council upon the request of *a* taxpayer for questioning either by the council or *a* taxpayer upon *the* estimates.

(2) Upon the conclusion of *the* hearing the council shall first determine the amount estimated to accrue to each fund during the fiscal year from all sources, except the taxation of property. *In* so doing the council *may* not include any amount anticipated from the payment of taxes which became delinquent during *a* preceding fiscal year. The council shall then determine separately the amount appropriated for and authorized to be *spent* for each item in the budget and shall specify the fund against which warrants are to be drawn for the expenditures so authorized. *There may* not be added to the amount appropriated and authorized to be *spent* for

an item or purpose, or to the total amount appropriated and authorized to be *spent* from any fund, other than a fund for the payment of principal or interest on outstanding bonds, any amount because of anticipated loss of revenue by reason of nonpayment of taxes levied for *the* fiscal year. *The* expenditures authorized from a fund, including reserve, may not exceed the aggregate of:

(a) the cash balance in *the* fund at the close of the *preceding* fiscal year in excess of outstanding unpaid warrants against *the* fund at the close of *that* fiscal year.

(b) the amount of estimated revenues to accrue to *the* fund; and

(c) the amount which may be raised for *the* fund by a lawful tax levy during the fiscal year.

(3) The council shall then determine the amount to be raised for each fund, for which a tax levy is to be made, by adding the cash balance in excess of outstanding unpaid warrants at the close of the *preceding* fiscal year and the amount of the estimated revenues, if any, to accrue to *the fund* during the current fiscal year. *It shall then deduct* the total amount so obtained from the total amount of the appropriations and authorized expenditures from the fund as determined by the council in the budget adopted and approved. *The* amount remaining *is* the amount necessary to be raised for any fund by tax levy during the current fiscal year. *The* council may add to the amount necessary to be raised for any fund by tax levy during the current fiscal year an additional amount, as a reserve to meet expenditures to be made from *the* fund during the months of July to November, of the next fiscal year. *The* amount added to any fund as a reserve may not exceed one-third ( $\frac{1}{3}$ ) of the total amount appropriated and authorized to be *spent* from *the* fund during the current fiscal year, after deducting from the amount of *the* appropriations and authorized expenditures the total amount appropriated and authorized to be *spent* for election expenses and payment of emergency and other outstanding warrants. *The* total amount to be raised by tax levy for any fund during *the* current fiscal year, including the amount of *the* reserve, must not exceed the total amount which may be raised for *the* fund by a tax levy which does not exceed the maximum levy permitted by law to be made for *the* fund.

(4) The budget as finally determined, in addition to setting out separately each item for which an appropriation is made or expenditure authorized, and the fund out of which it is to be paid, shall set out the total amount appropriated and authorized to be *spent* from each fund, the cash balance, in excess of outstanding unpaid warrants, at the close of the preceding fiscal year, the amount estimated to accrue to the fund from sources other than taxation, the reserve for the next fiscal year, and the amount necessary to be raised for each fund by tax levy during the current fiscal year. The council shall then by resolution approve and adopt the budget as finally determined, and the clerk shall enter it at length in the official minutes of the council.

(5) On the second Monday in August, and after the approval and adoption of the final budget, the council shall fix the tax levy for each fund

at a rate, not exceeding limits prescribed by law, *which* will raise the amount set out in the budget as the amount necessary to be raised by tax levy for *that* fund during the current fiscal year. *The* taxable valuation of the city for the current fiscal year shall be the basis for determining the amount of the tax levy for each fund, and each tax levy shall be at a rate no higher than is required on *that* basis, without including any amount for anticipated tax delinquency, to raise the amount set out in the budget. *Each* levy shall be made in the manner provided by section 84-3802. *If* the council *considers* that a levy made for a bond sinking or interest fund will not provide a sufficient amount to pay all bond and interest becoming due during the current fiscal year, or within six (6) months *after the current fiscal year*, because of anticipated tax delinquency, the council may fix the levy at a rate it *considers* necessary to raise the amount for making *the* payments of principal and interest, over and above *the* anticipated tax delinquency.

(6) The city clerk shall, not later than September 15, forward a complete copy of the final budget, together with the tax levies, to the *department of intergovernmental relations*. If a city clerk *fails* to forward the copy of the budget to the *department of intergovernmental relations* within the time required, the *department of intergovernmental relations* shall, before October 1, notify the mayor and council of the city that a copy of the budget has not been forwarded by the city clerk. *The* council must *then* withhold from the city clerk his salary or compensation for the month of September until the city clerk *presents* the council with a notice from the *department of intergovernmental relations* that *the* copy of *the* budget has been received."

Section 52. Section 11-1411, R.C.M. 1947, is amended to read as follows:

"11-1411. **Department of intergovernmental relations to make rules for carrying out act — accounting systems.** The *department of intergovernmental relations* shall make rules and classifications, and prescribe forms, necessary to carry out the provisions of this act. *It shall* define what expenditures *are* chargeable to each budget account, and *shall* establish accounting and cost systems necessary to provide accurate budget information."

Section 53. Section 11-1914, R.C.M. 1947, is amended to read as follows:

"11-1914. **Duties of trustees — investment of surplus funds.** The board of trustees of *the* fire department relief association shall audit the *accounts* of the association at least every six (6) months and shall report the condition *of them* at the next regular meeting of *the* association. The general management of the association shall be vested in the board of trustees. When so directed by a majority vote of the members of the association, the board of trustees *may* invest the surplus funds of the association or any part *of them*, in any time or saving deposits, in bonds or other securities of the United States government, in general obligation bonds or warrants of any state, county, or city as are recommended by the state auditor and approved by the *department of intergovernmental relations*. At the time of purchase *the* investments must be stamped in boldface type,

substantially as follows: "Property of the ..... Fire Department Relief Association, and negotiable only upon the order of the board of trustees of such association."

Section 54. Section 11-1923, R.C.M. 1947, is amended to read as follows:

"11-1923. **Annual report of the secretary and treasurer, prescribing qualifications for membership, official bond of the treasurer and examination of books and accounts.** (1) The secretary and treasurer of every fire department relief association shall annually prepare a detailed report of its receipts and expenditures for the preceding year, showing to whom and for what purposes the money has been paid and *spent*, and file it with the association, and a duplicate with the state auditor. No money *may* be paid to the treasurer of *the* fire department relief association until *the* report is filed. No one serving as a substitute or on probation, nor *a* person who has not been confirmed a member of an organized fire department, is eligible for membership in the relief association. No treasurer of *an* association *may* enter upon his duties until he has given to the association a sufficient bond of not less than fifty per cent (50%) of the amount of the cash funds and securities of the association, for the faithful performance of his duties according to law. *The* amount of *the* bond *shall* be approved and paid for by *the* association. *The* official bond *may not exceed* twenty-five thousand dollars (\$25,000).

(2) *Upon* a majority vote of the members of the association, the city or town treasurer shall be ex officio treasurer of the fire department relief association and the official bond of *the* city or town treasurer shall cover the faithful discharge of his duties as ex officio treasurer of the fire department relief association. *The* cash in the firemen's relief fund shall have the same protection as to depository securities furnished by banks as the other funds of the city or town. All of the financial books and accounts of *the* association *are* subject at all times to examination by the *department of intergovernmental relations*.

(3) Upon complaint being made to *it* that the money or any part of *it* paid to the treasurer of *the* association has been or is being *spent* for *an* unauthorized purpose, and if *the* money upon examination is found to have been *spent* contrary to the authority given, *the department of intergovernmental relations* shall so report to the governor, upon whose directions to the state auditor no further warrants *may* be issued to *the* fire department relief association treasurer until the money so *spent* has been returned."

Section 55. Section 11-3129, R.C.M. 1947, is amended to read as follows:

"11-3129. **Publication of report by council — examination of accounts.** The council shall *monthly* print in pamphlet form a detailed itemized statement of all of the receipts and expenses of the city and a summary of its proceedings during the preceding month, and furnish printed copies *of the statement* to the state library, the city library, the daily newspaper of the city, and persons who apply *for the statement* at the office of the city clerk."



Section 56. Section 11-4110, R.C.M. 1947, is amended to read as follows:

"11-4110. **Advice and information by department of intergovernmental relations.** The *department of intergovernmental relations* shall furnish advice and information in connection with a project when requested to do so by a county or municipality."

Section 57. Section 16-1226, R.C.M. 1947, is amended to read as follows:

"16-1226. **Purpose.** The purpose of this *chapter* is to *require the board of county printing* to set maximum prices which may be charged for county printing and legal advertising."

Section 58. There is a new section to be numbered 16-1226.1, R.C.M. 1947, which reads as follows:

16-1226.1. **Definition.** Unless the context requires otherwise, in this chapter "board" means the board of county printing provided for in section 82A-904.

Section 59. Section 16-1228, R.C.M. 1947, is amended to read as follows:

"16-1228. **Compensation.** *The members of the board shall be compensated and reimbursed as are members of advisory councils in section 82A-110.*"

Section 60. Section 16-1229, R.C.M. 1947, is amended to read as follows:

"16-1229. **Powers and duties of board.** The *board* shall:

- (1) *Meet annually;*
- (2) Adopt and publish a schedule of maximum prices to be charged for county printing and legal advertising. *The prices shall be the full prices to be charged and shall include the paper stock specified, completion of all printing and other work, and delivery to the county courthouse;*
- (3) Adopt necessary standards for sizes, weights, and grades of paper stock, which shall conform to the uniform scale of sizes, weights, and grades used by paper manufacturers, and for sizes and types of printing, ruling and binding, which shall conform as nearly as possible to the ordinary standards in use in the printing industry. For this purpose, reference may be made to established standards or publications used in *this* state, and the *board* may provide for the adoption of a standard list for those items not covered by the prices, regulations, or standards published by the *board*;
- (4) Conduct hearings when required to determine maximum rates for county printing. Notice of intention to hold a hearing shall be published at least thirty (30) days before the date set for the hearing in a newspaper published in Helena, and a copy mailed to each board of county commissioners;
- (5) Deliver free of charge to each board of county commissioners in

this state a copy of every schedule of maximum prices adopted by the *board* within thirty (30) days of its publication, together with a notice of the date fixed by the *board* when the prices will be effective."

Section 61. Section 16-1230, R.C.M. 1947, is amended to read as follows:

"16-1230. **County commissioners to contract for county printing.** (1) *The county commissioners shall contract with one (1) newspaper to do all the printing for the county, including advertising required by law and all printed forms required by the county, at a rate not exceeding that set by the board.*

(2) *The newspaper shall be:*

(a) *Of general circulation;*

(b) *Published at least once a week;*

(c) *Published in the county;*

(d) *Published continuously in the county for the twelve (12) months preceding the awarding of the contract.*

(3) Nothing in this act shall limit or restrict the power of a board of county commissioners to call for competitive bids from persons or firms qualified to bid on county printing under the terms of this act, or to let contracts at prices less than the maximum fixed by the board of county printing.

(4) In any county in which no newspaper owns or operates a commercial printing establishment, the county commissioners shall separate the printing contract into two (2) parts, one of which shall provide for the publication of legal advertising only, such contract being let to a legally qualified newspaper; and the other contract shall provide for all printed forms, materials and supplies required by the county, which contract shall be let to a commercial printing establishment which shall have been in business in the county for at least one (1) year; provided, however, that in no case shall any contract call for payment by the county of any prices in excess of the maximum fixed by the board of county printing."

Section 62. Section 16-1233, R.C.M. 1947, is amended to read as follows:

"16-1233. **County fairs and expositions exempt.** None of the provisions of this *chapter applies* to any printing or advertising that may be required in connection with the holding of county fairs and expositions."

Section 63. Section 16-1901, R.C.M. 1947, is amended to read as follows:

"16-1901. **County budget — estimates by county officers of revenues and expenditures — form of estimates — penalty for failure to file.** (1) *Before June 1* each year the county clerk and recorder shall notify in writing each county official in charge of an office, department, service, or institution of the county to file with *the* county clerk and recorder, before June 10, detailed and itemized estimates, both of the

probable revenues from sources other than taxation, and of all expenditures required by *the* office, department, service, or institution for the next fiscal year. The county commissioners shall submit to the county clerk and recorder the estimate of expenditures for all purposes for *the* board, and a detailed statement showing all new road and bridge construction to be financed from county road and bridge funds, *from* any special road or bridge funds, from any special highway fund, and from bond issues issued or authorized for the next fiscal year, together with the cost of *that construction* as computed by the county surveyor, or if for construction in charge of a special engineer then by *that* engineer. *The* county surveyor and any special engineer *shall* prepare *the* estimates of cost of *road and bridge construction* for the county commissioners. They shall also submit a similar statement showing road and bridge maintenance expenditures as nearly as can be estimated.

(2) The county commissioners shall also submit to the county clerk and recorder detailed estimates of all expenditures for construction or improvement purposes proposed to be made from the proceeds of bond issues not yet authorized and from the proceeds of tax levies which are required to be approved at an election to be held.

(3) The estimates required in this section shall be submitted on forms provided by the county clerk and recorder, and prescribed by the *department of intergovernmental relations*, and may only be varied or departed from with permission and approval of *that department*. The county treasurer shall prepare the estimates for interest and debt reduction. The county clerk and recorder shall prepare all other estimates which properly fall within the duties of his office.

(4) *Each of the officials shall file the estimates within the time and in the manner provided in the form and notice, and the county clerk shall withhold, as a penalty, from the salary of each official failing or refusing to file the estimates ten dollars (\$10) for each day of delay. The total penalty against any official may not exceed fifty dollars (\$50) in one year. In the absence or disability of an official the duties required by this section devolve upon the official or employee in charge of the office, department, service, or institution. The notice shall contain a copy of this penalty clause.*

Section 64. Section 16-1902, R.C.M. 1947, is amended to read as follows:

**"16-1902. Tabulation by clerk of expenditure program — classifications — items included in.** (1) From *those* estimates the county clerk and recorder shall prepare a tabulation showing the complete expenditure program of the county for the current fiscal year, and the sources of revenue by which it is to be financed. *The* tabulation shall set forth the estimated receipts from all sources other than taxation for each office, department, service, or institution for the current fiscal year, the actual receipts for the last completed fiscal year, the surplus or unencumbered treasury balances at the close of *that* last fiscal year, and the amount necessary to be raised by taxation; the estimated expenditure for each office, department, service, or institution for the current fiscal year, the actual expenditures for the last completed fiscal year, and all contracts or other obligations which will affect the current year revenues.

(2) *The estimates, appropriations, and expenditures shall be classified as:*

- (a) salaries and wages;
- (b) maintenance and operation;
- (c) capital outlay;
- (d) interest and debt redemption;
- (e) miscellaneous; and

(f) expenditures proposed to be made from bond issues not yet authorized, or from the proceeds of a tax levy or levies which are required to be submitted to and approved at an election to be held *later*.

(3) Within the general class of salaries and wages each salary shall be set forth separately together with the title or position of the recipient. An unitemized appropriation may be made to cover the expenses of special deputies or assistants in any office where the services of such special deputies or assistants may be required during a part of the fiscal year only. Wages for day labor may be given in totals by designating the general purpose or object for which the expenditure is to be made, but the proposed rate per *day* for each class or kind of labor shall be set forth. Expenditures under the general class of maintenance and operation shall be classified according to a standard classification to be established by the *department of intergovernmental relations*. Expenditures for capital outlay shall set forth and describe each object of expenditure separately. Under the general class of interest and debt redemption, proposed expenditures for interest and for redemption of principal shall be set forth separately for each series or issue of bonds, and warrant interest and redemption requirements shall be set forth in a similar manner. Under the general class of miscellaneous, expenditures for all purposes, not listed in or which cannot properly be assigned to any of the general classes, shall be set forth and itemized in detail.

(4) The total amount of emergency warrants issued during the preceding fiscal year shall be set forth with the amount issued for each emergency and the amount issued against each fund."

Section 65. Section 16-1903, R.C.M. 1947, is amended to read as follows:

"16-1903. **Consideration of budget by commissioners — notice of budget meeting.** The tabulation shall be submitted to the county commissioners by the county clerk and recorder on or before the first Monday of July. Upon receipt thereof the board of county commissioners shall immediately consider the *budget* in detail, and shall on or before the second Monday of July make any revisions, reductions, additions, or changes that they *consider* advisable. The tabulation, with *any* revisions, reductions, additions, or changes, *is* the preliminary budget for the fiscal year which it is intended to cover. Upon completion of *the* budget, the county clerk *shall immediately* transmit one copy of *it* to the *department of intergovernmental relations* and one copy to the *department of revenue*. The board of county commissioners shall then *have* a notice published

stating that *the* board has completed *its* preliminary county budget for the current fiscal year, that *the* budget is open to inspection in the office of the county clerk and recorder, and that *the* board will meet on the Wednesday *before* the second Monday in August to *fix* the final budget and *make* appropriations. *The notice shall state the time and place of the meeting and that any taxpayer may appear and be heard for or against any part of the budget. The notice shall be published at least one time in a newspaper of general circulation in the county.*"

Section 66. Section 16-1904, R.C.M. 1947, is amended to read as follows:

**"16-1904. Hearings on budget — adoption — fixing tax levies.**

(1) On the Wednesday *before* the second Monday in August the county commissioners shall meet at the time and place designated in the notice provided for in section 16-1903, at which time any taxpayer may appear and be heard for or against any part of *the* budget. *The* hearing shall be continued from day to day and shall be concluded and the budget approved and adopted on the second Monday in August and before the fixing of the tax levies by *the* board.

(2) Upon the conclusion of *the* hearing the board shall first determine the amount estimated to accrue to each fund during the fiscal year from all sources, except the taxation of property. *In* so doing the board may not include any amount which it is anticipated may be received during the fiscal year from the payment of taxes which became delinquent during a preceding fiscal year. The board shall then determine separately the amount appropriated for and authorized to be *spent* for each item in the budget and shall specify the fund or funds against which warrants are to be drawn and issued for each item in the budget and shall specify the fund or funds against which warrants are to be drawn for the expenditures authorized. *There may* not be added to the amount to be appropriated and authorized to be *spent* for *an* item, or to the total amount appropriated and authorized to be *spent* from any fund, any amount or percentage because of anticipated loss of revenue by reason of the nonpayment of taxes levied for *that* fiscal year. *The* amount appropriated and authorized to be *spent* for any item contained in *the* budget, except for salaries, which must not exceed by more than ten percent (10%) the amount appropriated and authorized for *the* item under the appropriation contained in the budget approved and adopted for the *preceding* fiscal year, and except for capital outlay, election expenses, expenditures from county poor funds, and payment of emergency warrants and interest, must not exceed by more than five percent (5%) the amount appropriated and authorized for *the* item under the appropriation contained in the budget approved and adopted for the *preceding* fiscal year. *The amount appropriated for any fund, except for capital outlay, election expenses, and payments of emergency warrants and interest on them, may not exceed by more than five percent (5%) the amount appropriated for all purposes less the sum of the current fiscal year's appropriation for salaries and the previous fiscal year's expenditures for election expenses, for payment of emergency warrants, and from the county poor fund. The foregoing limitations shall not apply to appropriations and expenditures authorized to be made from the county poor fund for payment of bonds and emergency warrants and*

interest on them. The total expenditures authorized to be made from any fund, including the reserve added to them, may not exceed the aggregate of:

- (a) the cash balance in the fund at the close of the preceding fiscal year;
- (b) the amount of estimated revenues to accrue to the funds; and
- (c) the amount which may be raised for the fund by a lawful tax levy during the fiscal year.

(3) The board shall then determine the amount to be raised for each fund by tax levy by adding the cash balance in the fund at the close of the preceding fiscal year and the amount of the estimated revenues to accrue to the fund during the current fiscal year. It shall then deduct the total amount so obtained from the total amount of the appropriations and authorized expenditures from the fund as determined by the board. The amount remaining is the amount necessary to be raised for the fund by tax levy during the current fiscal year. The board may add to the amount necessary to be raised for any fund by tax levy during the current fiscal year, an additional amount as a reserve to meet expenditures to be made from the fund during the months of July to November of the next fiscal year. The amount which may be so added to any fund, as the reserve may not exceed one-third ( $\frac{1}{3}$ ) of the total amount appropriated and authorized to be spent from the fund during the current fiscal year, after deducting from the amount of the appropriations and authorized expenditures the total amount appropriated and authorized to be spent for election expenses and payment of emergency warrants. The total amount to be raised by tax levy for any fund during the current fiscal year, including the amount of the reserve and any amount for payment of election expenses and emergency warrants, may not exceed the total amount which may be raised for the fund by a tax levy which does not exceed the maximum levy permitted by law to be made for the fund.

(4) If the cash balance remaining in any of the several county funds, except the school fund, at the end of a fiscal year, exceeds the amount to be budgeted to that fund, the excess may be transferred to other funds as the county commissioners consider to be in the best interest of the county after a public hearing. Notice of the hearing must be given not less than thirty (30) days prior to the hearing by publication in a newspaper of general circulation in the county and by posting in five (5) public places. The notice must state the date, time, and place of the hearing and state generally the purpose and proposed use of the funds.

(5) The budget as finally determined, in addition to setting out separately each item for which an appropriation or expenditure is authorized and the fund out of which it is to be paid, shall set out the total amount appropriated and authorized to be spent from each fund, the cash balance in the fund at the close of the preceding fiscal year, the amount estimated to accrue to the fund from sources other than taxation, the reserve for the next fiscal year, and the amount necessary to be raised for each fund by tax levy during the current fiscal year. The board shall then by resolution approve and adopt the budget as finally determined and enter the budget at length in the official minutes of the board.

(6) On the second Monday in August, and after the approval and adoption of the final budget, the board of county commissioners shall fix the tax levy for each fund at a rate *which* will raise the amount set out in the budget as the amount necessary to be raised by tax levy for the fund during the current fiscal year. The taxable valuation of the county for the current fiscal year shall be the basis for determining the amount of the tax levy for each fund. *Each* tax levy shall be at a rate no higher than is required on *that* basis, without including any amount for anticipated tax delinquency, to produce the amount set out in the budget without including any amount for anticipated tax delinquency, as being the amount to be raised by tax levy. The tax levy shall be made in the manner provided by section 84-3802.

(7) The county clerk and recorder shall, not later than September 15, forward a full and detailed copy of the final budget, together with the tax levies, to the *department of intergovernmental relations*. If a county clerk and recorder *fails* to forward a copy of the budget to the *department* within *that* time, *that department* shall, before October 1, notify the board of county commissioners of the county that a copy of the budget has not been forwarded by the county clerk and recorder. The board of county commissioners must *then* withhold the county clerk and recorder's salary for September until the county clerk and recorder *files* with the board a receipt from the *department* showing the receipt of a copy."

Section 67. Section 16-1909, R.C.M. 1947, is amended to read as follows:

"16-1909. **Department of intergovernmental relations to make rules — accounting systems.** The *department of intergovernmental relations* shall make rules and classifications, and prescribe forms, necessary to carry out the provisions of *sections 16-1901 through 16-1904 and 16-1906 through 16-1911*, to define what expenditures are chargeable to each budget account, and to establish accounting and cost systems necessary to provide accurate budget information."

Section 68. Section 16-2001, R.C.M. 1947, is amended to read as follows:

"16-2001. **Investments of sinking funds of counties, cities, and towns — protection and keeping of bonds, securities, and any time or savings deposits.** The board of county commissioners of a county, and the council or commission of a city or town, shall invest so much of the bond sinking funds of the county, city, or town, as is not needed for the payment of bonds or interest coupons, in United States government bonds or securities, state bonds or securities, time or savings deposits, county, city, or school district bonds, county or city warrants, or other bonds or securities which are supported by general taxation, except irrigation district bonds and special improvement district or maintenance district bonds or warrants. *All those* investments must first be approved by the *department of intergovernmental relations*. *All those* bonds, securities, or time or savings deposits must be due and payable at least sixty (60) days before the obligations, for the payment of which the sinking fund was established, are due and payable. *If* any of the bonds for which the sinking fund was established are not yet due but are then redeemable under

optional provisions, *the sinking funds are* not subject to investment but shall be used and applied in payment and redemption of *the* bonds. The bonds, securities, and any time or savings deposits in which any sinking funds are invested shall be kept in the custody of the county, city, or town treasurer and held by him for the benefit of the county, city, or town. *The treasurer shall* properly protect *the* bonds, securities, and any time or savings deposits by insurance, the use of safety deposit boxes, or other means, the expense of which *is* a proper charge against the county, city, or town. All moneys derived from interest on sinking fund investments as authorized *by this section*, shall be credited by the treasurer of *the* county, city, or town to the sinking fund for which the investment was made."

Section 69. Section 16-2049, R.C.M. 1947, is amended to read as follows:

"16-2049. **Petty cash fund.** The board of county commissioners, with the approval of the *department of intergovernmental relations*, may set aside a sum of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) out of the general fund, which shall be known as a petty cash fund, for the purpose of paying incidental expenses such as freight, express, postage, and other similar items which must be paid in cash at time of delivery. *In* counties having a county auditor, the county auditor *is* responsible for expenditures from the petty cash fund. *In* counties not having a county auditor, the county clerk *is* responsible for expenditures from the petty cash fund."

Section 70. Section 16-2621, R.C.M. 1947, is amended to read as follows:

"16-2621. **Director of department of intergovernmental relations to sign trustee and deposit receipts.** The *director of the department of intergovernmental relations* shall sign all trustee and deposit receipts and releases required to be signed on behalf of the state in all cases where negotiable securities are placed in trust with a trustee in *place* of the actual securities, for security of county, city, and town deposits, under the laws of the state relating to the deposit of county, city, and town funds."

Section 71. Section 16-2625, R.C.M. 1947, is amended to read as follows:

"16-2625. **Must permit department of intergovernmental relations and county clerk to examine books.** (1) The treasurer must permit the *department of intergovernmental relations* and county clerk or the board of county commissioners to examine his books and count the money in the treasury, *when* any of them *wants* to make an examination or counting.

(2) *The* county clerk and recorder at the close of business each month shall count the cash in the office of the county treasurer and shall certify the amount in detail to the *department of intergovernmental relations*, retaining a copy of *the* certification in his office."

Section 72. Section 16-2924, R.C.M. 1947, is amended to read as follows:



**"16-2924. Annual report of county clerk.** Within forty days after the close of each fiscal year, the county clerk shall make out and present to the board of county commissioners and the *department of intergovernmental relations* a complete statement of the financial condition of the county. *The statement shall be made out on the form designated by the department of intergovernmental relations and must show:*

- (1) A detailed description of all of the resources and liabilities of the county and the book value of *them*;
- (2) The amount of moneys received showing the source of *that* revenue;
- (3) The amount of moneys disbursed, with the purpose of disbursement;
- (4) The operation of each of the cash and warrant accounts, showing the balance at the beginning of the year, the credits, the debits, and the balance at the end of the year.
- (5) The assessed valuation of the real and personal property of the county, the rate of taxation, the amount of taxes delinquent for the preceding years, and such other items the *department of intergovernmental relations* may prescribe."

Section 73. Section 25-231, R.C.M. 1947, is amended to read as follows:

**"25-231. Fees of county clerks.** The county clerks must *charge*, for the use of their respective counties:

(1) For recording and indexing *a written* instrument allowed by law to be recorded, except as *otherwise provided in this section*:

(a) For *the* first folio, sixty cents (60¢), and for each subsequent folio or fraction of *one*, thirty cents (30¢);

(b) For each entry in index, twenty cents (20¢);

(c) For *a* certificate that *an* instrument has been recorded with seal affixed, one dollar (\$1);

(2) For recording and indexing each real estate mortgage, *or an* assignment, renewal, or release of *a* real estate mortgage:

(a) For each folio, forty cents (40¢);

(b) For each entry in index, twenty cents (20¢);

(c) For *a* certificate that *the* mortgage, assignment, or release has been recorded with seal affixed, one dollar (\$1);

(3) For recording and indexing each certificate of location of *a* quartz or placer mining claim, millsite claim, or notice of appropriation of water, including *a* certificate that *the* instrument has been recorded with seal affixed, four dollars (\$4);

(4) For recording and indexing each affidavit of annual labor on *a* mining claim, including certificate that *the* instrument has been recorded with seal affixed, two dollars (\$2) for the first mining claim in *the* affidavit, and fifty cents (50¢) for each additional mining claim included *in it*,

(5) For filing and indexing each writ of attachment, execution, certificate of sale, lien, or other instrument required by law to be filed and indexed, one dollar (\$1);

(6) For filing and indexing each certificate of incorporation or annual statement of a corporation, two dollars (\$2);

(7) For recording and platting each townsite or map:

(a) For each lot up to and including one hundred, fifty cents (50¢);

(b) For each additional lot in excess of one hundred, ten cents (10¢);

(c) For recording the field notes of survey of a townsite, per folio, fifty cents (50¢).

(8) *Where* recording is done by photographic or similar process the county clerk and recorder *shall charge*, for filing and indexing, two dollars (\$2) for each page or fraction of a page of the instrument.

(9) For a copy of a record or paper, for each folio, thirty cents (30¢) and for each certification with seal affixed, one dollar (\$1). In all cases where copies of a record or paper are to be certified by the county clerk and the copy is furnished to the clerk for certification, the clerk shall not charge a fee for the comparison of the copy, other than the fee of one dollar (\$1) for his certificate and seal.

(10) For searching an index record of files of the office, for each year when required, in abstracting or otherwise, thirty cents (30¢);

(11) For each entry of discharge or satisfaction of a mortgage, lien, or other instrument on the margin of record of it, or upon the original instrument, and noting the entry in the indexes concerned, fifty cents (50¢);

(12) For administering an oath with certificate and seal, no charge;

(13) For taking and certifying an acknowledgment, with seal affixed, for signature to it, no charge;

(14) For recording and indexing an instrument which may be recorded under section 73-104, and which pertains to land allotted to an Indian or land within an Indian reservation, except fee patents, no charge;

(15) For filing, indexing, or other services provided for by sections 87A-9-401 through 87A-9-407, the fees prescribed in those sections;

(16) For filing, recording, or indexing any other instrument not expressly provided for in this section, the same fee provided in this section for a similar service;

(17) On each instrument delivered to him for recording, the county clerk shall endorse on it all charges made for each service and the endorsement shall be recorded as a part of the instrument in his office in order that the department of intergovernmental relations may verify the charges and may see that they have been properly entered on the fee book or reception record in the county clerk's office."

Section 74. Section 32-4601, R.C.M. 1947, is amended to read as follows:

"32-4601. **Purpose of chapter.** *To promote public safety, health, and welfare, and to reduce traffic deaths, injuries and property losses resulting from traffic accidents, it is in the public interest to establish a highway traffic safety program and provide for its administration. It is in the public interest to implement, modernize, and improve the following traffic safety activities: driver performance, including, but not limited to, driver education, driver testing to determine proficiency to operate motor vehicles; driver examinations, both physical and mental; driver licensing; pedestrian performance; establish an effective accident record system, including traffic accident investigation to determine the probable cause of accidents, injuries and deaths; to improve and establish a system of vehicle registration, vehicle operation and vehicle inspection; to assist in the improving of highway design and maintenance, including lighting, markings, and surface treatment to improve safety; establish an effective traffic control system; promote the adoption of uniform vehicle laws; provide for surveillance of traffic for detection and correction of high or potentially high accident locations; establish emergency services, including, but not limited to, communications, medical or mechanical assistance, and ambulance service for injured persons; establish an effective compilation and storage program of reports and records through electronic data processing.*"

Section 75. Section 32-4602, R.C.M. 1947, is amended to read as follows:

"32-4602. **Definitions.** *Unless the context requires otherwise, in this chapter:*

(1) "Highway traffic safety program" means a program designed to reduce traffic accidents, deaths, *and* injuries to persons, and damage to property. *The* program shall be in accordance with uniform standards established by the secretary of commerce of the United States under title 23, United States Code Annotated, as amended. *Nothing in this chapter restricts or prohibits* the establishment of standards which enlarge or implement the federal standards.

(2) "Political subdivisions" means every county, incorporated city or town, and school district within the boundaries of the state.

(3) "Department" means the department of intergovernmental relations provided for in Title 82A, chapter 9."

Section 76. Section 32-4605, R.C.M. 1947, is amended to read as follows:

"32-4605. **Duties.** (1) The governor *is* responsible for the administration of the highway traffic safety program. The governor *may* contract and do all other things necessary to secure the full benefits available to this state under the Federal Highway Safety Act of 1966, and, in so doing, *may* co-operate with federal and state agencies, private and public organizations, and individuals to effectuate the purposes of that enactment, and all amendments *to it*. For purposes of participation in the Federal Highway Safety Act of 1966, the governor shall designate the super-

intendent of public instruction as the state agency responsible for all aspects of federally assisted driver education and safety programs in the public schools, including the approval of *the* programs; certification of teachers; and the acceptance, allocation, and expenditure of funds for driver education in accordance with applicable federal laws and regulations. Nothing in this *chapter* *interferes* with the provisions of *section 75-7303* or chapter 79 of Title 75, *R.C.M.*, 1947.

(2) *The department of intergovernmental relations shall:*

(a) advise and assist the governor in all matters of highway safety and establish comprehensive training programs, including establishment and regulation of driver training schools and certification of *the* schools and instructors *and* establishment of adult training and retraining programs;

(b) develop and procure practice driving facilities, simulators, and other teaching aids for school and driver training use;

(c) establish a continuing and adequate research program designed to determine the causes of accidents and effect a program of prevention;

(d) establish a uniform system of driver licensing, including mental and physical standards; and

(e) prescribe and establish safety regulations for motor vehicles and operators."

Section 77. Section 32-4606, *R.C.M.* 1947, is amended to read as follows:

"32-4606. **Funds.** The governor and the *department* *may* enter into contracts with the federal government to secure maximum federal appropriation. At least forty per cent (40%) of all federal funds received by the state shall be *spent* by the political subdivisions of *the* state in carrying out local approved highway traffic safety programs. Except as provided in this *chapter*, the governor *may* accept all gifts, money, and funds to implement the purposes of this *chapter*. *The* expenditure of funds, exclusive of the federal appropriation, shall be maintained at a level which shall not fall below the average level of *the* expenditures for the last two (2) full fiscal years preceding July 1, 1966, as determined by the expenditures of state and political subdivisions."

Section 78. Section 32-4607, *R.C.M.* 1947, is amended to read as follows:

"32-4607. **Local programs.** Except as provided in this *chapter*, all highway traffic safety programs of political subdivisions must be approved by the governor and no funds *may* be *spent* unless *his* approval is obtained. All local and state officials *shall* co-operate with the governor and *department* to accomplish the purposes of this *chapter*. The governor *shall* administer the highway traffic safety programs of this state and its political subdivisions in accordance with this *chapter* and federal rules."

Section 79. Section 59-514, *R.C.M.* 1947, is amended to read as follows:

**"59-514. Destruction of old county records may be ordered by commissioners with approval of department of intergovernmental relations — destruction of old school district records may be ordered by trustees with approval of the department of intergovernmental relations.** (1) A county officer may destroy old worthless reports, papers, or records in his office that have served their purpose and that are substantiated by permanent records, upon the order of the board of county commissioners and with the approval of the *department of intergovernmental relations*.

(2) A school officer may destroy old worthless reports, papers, or records in his office that have served their purpose and that are substantiated by permanent records, upon the order of the board of trustees and with the approval of the *department of intergovernmental relations*."

Section 80. Section 59-515, R.C.M. 1947, is amended to read as follows:

**"59-515. Destruction of old city or town records may be ordered by council with approval of department of intergovernmental relations.** A city or town officer may destroy old worthless reports, papers, or records in his office that have served their purpose and that are substantiated by permanent records, upon the order of the city or town council or commission and with the approval of the *department of intergovernmental relations*."

Section 81. Section 82-3701, R.C.M. 1947, is amended to read as follows:

**"82-3701. Short title.** This *chapter* shall be known and may be cited as the "Montana Planning and Economic Development Act of 1967."

Section 82. Section 82-3702, R.C.M. 1947, is amended to read as follows:

**"82-3702. Declaration of necessity and public policy.** It is hereby declared to be a necessity and the public policy of the state to promote, stimulate, and encourage the planning and development of the economy of the state in order to provide for the social and economic prosperity of its citizens. Such promotion and development of industry, commerce, agriculture, labor, and natural resources of the state requires that cognizance be taken of the continuing migration of people to the urban areas in search of job opportunities, and the fact that Montana is making a needed transition to a diversified economy. Community planning, greater diversification, and attraction of additional industry, accelerated development of natural resources, expansion of existing industry, creation of new uses for agricultural products, greater emphasis on scientific research, development of new markets for the products of the state, and the attainment of a proper balance in the over-all economic base are all necessary in order to create additional employment opportunities, increase personal income, and promote the general welfare of the people of this state. The *department of intergovernmental relations* shall be regarded as performing a governmental function in carrying out the provisions of this *chapter*."

Section 83. Section 82-3705, R.C.M. 1947, is amended to read as follows:

**"82-3705. Functions of department of intergovernmental relations — state planning.** *The department of intergovernmental relations shall:*

(A) State Planning.

(1) Develop and adopt a comprehensive plan for the physical development of the state;

(2) Make economic and social studies needed to accomplish the purposes of this *chapter*;

(3) Co-ordinate and assist regional development groups in the comprehensive development of the resources of the region to the betterment of Montana;

(4) Assemble and correlate information for the purpose of making long-range plans for economic and resource development of the state and its subdivisions relating to all of the factors which influence the development of new and existing economic enterprises, including taxes and the regulation of industry;

(5) Provide advice and assistance to Montana business and labor in the field of economic development and bring to the attention of the governor those significant problems adversely affecting economic development which may be relieved by state action;

(6) Locate and maintain information on prime sites for industrial, agricultural, mineral, forestry, commercial, and residential development and on sites of historical importance, and make recommendations for protecting and preserving *those* sites;

(7) Apply for, accept, and administer grants from the federal government or other public or private sources to accomplish the objectives of this *chapter*, and enter into contracts, including agreements with adjoining states, with respect to planning involving adjoining states;

(8) Serve as the consultative, co-ordinating, and advisory agency for state departments, officials, and agencies in state planning and for encouraging and aiding local planning bodies, either directly or by securing planning assistance, consulting services, and technical aid, which may include land use, demographic, and economic studies and surveys, and comprehensive plans."

Section 84. There is a new section to be numbered 82-3705.1, R.C.M. 1947, which reads as follows:

**82-3705.1. Functions of department of intergovernmental relations — community development.** The department of intergovernmental relations shall: (1) Cooperate with and provide technical assistance to county, municipal, state, and regional planning commissions, zoning commissions, parks or recreation boards, community development groups, community action agencies, and similar agencies created for the purposes of aiding and encouraging orderly, productive, and coordinated development of the communities of the state;

(2) Assist the governor in coordinating the activities of state agencies which have an impact on solution of community development problems and implementation of community plans;

(3) Serve as a clearinghouse for information, data, and other materials which may be helpful or necessary to local governments to discharge their responsibilities and provide information on available federal and state financial and technical assistance;

(4) Carry out continuing studies and analyses of the problems faced by communities within the state and develop those recommendations for administrative or legislative action as appear necessary. In carrying out the studies and analyses, the department shall pay particular attention to the problems of metropolitan, suburban, and other areas in which economic and population factors are rapidly changing.

Section 85. There is a new section to be numbered 82-3705.2, R.C.M. 1947, which reads as follows:

**82-3705.2. Functions of department of intergovernmental relations — recreational development.** The department of intergovernmental relations shall: (1) Exercise state responsibility for that part of recreational planning and development which is directly related to private investment in recreational facilities;

(2) Assemble and correlate information which may influence the development of recreational enterprises and disseminate it to persons, firms, or corporations interested in constructing or maintaining recreational facilities open to the public.

Section 86. There is a new section to be numbered 82-3705.3, R.C.M. 1947, which reads as follows:

**82-3705.3. Functions of department of intergovernmental relations — economic development.** The department of intergovernmental relations shall: (1) Provide coordinating services to aid state and local groups in the promotion of new economic enterprises and conduct publicity and promotional activities in connection with new economic enterprises;

(2) Collect and disseminate information regarding the advantages of developing agricultural, recreational, commercial, and industrial enterprises within this state;

(3) Serve as the state's official liaison between persons interested in locating new economic enterprises in Montana and state and local groups seeking new enterprises;

(4) Aid communities interested in obtaining new business or expanding existing business;

(5) Study and promote means of expanding markets for Montana products;

(6) Encourage and coordinate public and private agencies or bodies in publicizing the facilities and attractions of the state.

Section 87. Section 82-3706, R.C.M. 1947, is amended to read as follows:

**"82-3706. Contracts and agreements for projects and programs — co-operation with other agencies.** (1) The department of *intergovernmental relations* may contract for consulting services for the purpose of undertaking and conducting planning and study projects. It may make agreements with other state agencies in order to *accomplish* its own research programs. It may *perform* research, but when possible shall make full use of and strengthen the research resources of other state agencies, including the university system. Other state agencies *shall* provide the department with information *which* will assist it in carrying out this *chapter*.

(2) The department shall assist and co-operate with other state agencies and officials, with official organizations of elected officials in the state, with local governments and officials, and with federal agencies and officials, in carrying out the functions and duties of the department.

(3) It may consult with private groups and individuals, and if the department *considers* it desirable, hold public hearings to obtain information for the purposes of carrying out this *chapter*."

Section 88. There is a new section to be numbered 82-4501, R.C.M. 1947, which reads as follows:

82-4501. **Definition.** Unless the context requires otherwise, in this chapter "department" means the department of intergovernmental relations provided for in Title 82A, chapter 9.

Section 89. There is a new section to be numbered 82-4502, R.C.M. 1947, which reads as follows:

82-4502. **Examination duties of department.** The department shall annually examine the books and accounts of all:

(1) County clerks, county auditors, county treasurers, district court clerks, sheriffs, public administrators, boards of county commissioners, and other county and municipal officers and boards;

(2) Incorporated cities and towns;

(3) School districts of the first and second class and third class districts maintaining a high school;

(4) Irrigation districts;

(5) Conservancy districts;

(6) Fire districts and volunteer fire departments in unincorporated areas, towns, and villages supported by a mill levy;

(7) Fire department relief associations.

Section 90. There is a new section to be numbered 82-4503, R.C.M. 1947, which reads as follows:

82-4503. **Fees for examination.** The fees for the examinations provided for in section 82-4502 are:

(1) For the examination of county clerks, county auditors, county



treasurers, district court clerks, sheriffs, public administrators, boards of county commissioners, all other county and municipal officers and boards, and incorporated cities and towns, eighty dollars (\$80) a day for each person engaged in the examination, to be paid to the state treasurer and credited to the state general fund;

(2) For the examination of school districts, irrigation districts, and conservancy districts, seventy dollars (\$70) a day for each person engaged in the examination, to be paid to the state treasurer and credited to the state general fund;

(3) For the examination of fire districts and volunteer fire departments, seven dollars and fifty cents (\$7.50) an hour for each person engaged in the examination, to be paid to the state treasurer and credited to the state general fund;

(4) For the examination of fire department relief associations, on the basis of the funds of the association:

(a) If the fund is more than one thousand dollars (\$1,000) and less than five thousand dollars (\$5,000), ten dollars (\$10);

(b) If the fund is from five thousand dollars (\$5,000) to ten thousand dollars (\$10,000), twenty-five dollars (\$25);

(c) If the fund is more than ten thousand dollars (\$10,000), thirty-five dollars (\$35). Fees for the examination of fire department relief associations shall be paid to the state treasurer before July 1 and credited to the state general fund.

Section 91. There is a new section to be numbered 82-4504, R.C.M. 1947, which reads as follows:

82-4504. **Special examinations.** In addition to the annual examinations required by section 82-4502, the department may at any time conduct a special examination of the books and accounts of a county, city, town, school district, irrigation district, high school, or other county or municipal office, board, or commission which has the control, management, collection, or disbursement of public money. The fee for a special examination is eighty dollars (\$80) a day for each person engaged in the examination and shall be paid to the state treasurer for credit to the state general fund.

Section 92. There is a new section to be numbered 82-4505, R.C.M. 1947, which reads as follows:

82-4505. **County, city, and town reports — filing with public officers — violations.** (1) Within sixty (60) days after the examination of a county, city, or town, the department must make a report of the examination to the board of county commissioners, the city or town council, and the county, city, or town attorney. If a violation of law or non performance of duty is found on the part of an officer or board, the officer or board must be proceeded against by the attorney general, or county, city, or town attorney as provided by law.

(2) The county attorneys and the attorneys of the cities and towns

shall report to the department, within thirty (30) days after receiving from the department the report of an examination of a county, city, or town, the proceedings instituted or to be instituted relating to violations of law and nonperformance of duty.

(3) If a county or city attorney refuses or neglects to notify the department within thirty (30) days after receiving the report of an examination of a county, city, or town, as to the proceedings he has instituted or is about to institute against an officer for violations of law or nonperformance of duty, as evidenced by matters of record, and as set forth in the department's report, the department may withhold the salary of the county or city attorney by filing notice with the proper officials, until a satisfactory explanation has been made to the department. If the county or city attorney fails or refuses to prosecute the case, the department may employ an attorney to prosecute the case at the expense of the county, city, or town.

Section 93. There is a new section to be numbered 82-4506, R.C.M. 1947, which reads as follows:

**82-4506. School district, fire district, and volunteer fire department reports — filing with public officers.** (1) A copy of the department's report of its examination of a school district shall be filed with the county superintendent of schools, the state superintendent of public instruction, and the clerk of the school district. A citizen of the state may inspect, copy, and publish any of the facts contained in the report.

(2) A copy of the department's report of its examination of a fire district or volunteer fire department shall be filed with the clerk and recorder of the county in which the fire district or fire department is located.

Section 94. There is a new section to be numbered 82-4507, R.C.M. 1947, which reads as follows:

**82-4507. Accounting methods.** The department shall prescribe the general methods and details of accounting for the receipt and disbursement of all moneys belonging to counties, cities, towns, and school districts, and shall establish in those offices general methods and details of accounting. County, city, town, and school district officers shall conform with the standards prescribed by the department.

Section 95. There is a new section to be numbered 82-4508, R.C.M. 1947, which reads as follows:

**82-4508. Publication of department's report to counties — entering in commissioners' minutes.** Upon the receipt of the department's report covering the examination of the affairs of a county, the board of county commissioners of that county shall have the report entered and made a part of the minutes of the next regular meeting of the board. However, the report shall not be published by the board of county commissioners as a part of the minutes of its proceedings. The department shall, at the time the report is forwarded to the county commissioners, send a copy to the official newspaper of the county for publication. The report shall be published once in the official newspaper immediately, and is a

charge against the county at the rate provided for by contract for printing proceedings of the county commissioners.

Section 96. There is a new section to be numbered 82-4509, R.C.M. 1947, which reads as follows:

**82-4509. Duty of officers to aid in examination.** (1) The officers and employees of all counties, cities, and other local governments subject to examination by the department shall afford all reasonable facilities for the department's examination and shall furnish information to the department, under oath, in a manner prescribed by the department.

(2) An officer or person violating this section is guilty of a misdemeanor and shall be punished by imprisonment in the county jail not exceeding six (6) months, or by fine not exceeding five hundred dollars (\$500), or both.

Section 97. There is a new section to be numbered 82-4510, R.C.M. 1947, which reads as follows:

**82-4510. Power to examine books and papers.** The department may examine any books, papers, accounts, and documents in the office or possession of a county, city, or local government referred to in this chapter, and may send for persons or papers and examine under oath any person concerning them.

Section 98. There is a new section to be numbered 82-4511, R.C.M. 1947, which reads as follows:

**82-4511. Failure of county officers to transmit statements to department — penalty.** (1) If a county clerk fails to send to the department a copy of any quarterly report required by the department, within ten (10) days after the end of a quarter, or an annual financial statement of the county within forty (40) days after the end of the fiscal year, then he shall forfeit to the county one hundred dollars (\$100) to be deducted from his salary by the board of county commissioners of the county on notice of the failure from the department.

(2) If an officer refuses or neglects to comply with a lawful regulation prescribed by the department under authority of section 82-4507, or to submit a required report, the salary of that report officer shall, on request of the department to the proper official, be withheld until the officer obeys, and the department certifies approval to the disbursing official.

Section 99. There is a new section to be numbered 82-4512, R.C.M. 1947, which reads as follows:

**82-4512. Access to accounts of public officers—actions to compel.** (1) The department may count the cash, verify the bank accounts, and verify all accounts of a public officer whose accounts it is examining under law.

(2) If a county, city, town, or school district officer refuses to accord the department access during an examination of the officer's accounts to his cash, bank accounts, or any of the papers, vouchers, or records of his office, or if the department, after counting the cash and verifying the

bank accounts of that officer, finds that a shortage exists in the accounts of that officer, the department shall immediately file a verified preliminary report showing the refusal of that officer or the existence of the shortage, and the amount or approximate amount of the shortage, with the board of county commissioners if the officer is a county or school district officer, and with the city or town council if the officer is a city or town officer. Upon the filing of the statement, the officer shall immediately be suspended from the duties and emoluments of his office, and the board of county commissioners or the city or town council shall appoint some qualified person to the office, pending completion of the examination.

(3) Upon the completion of the audit or examination of the accounts of the officer by the department, if a shortage existed in the accounts of the officer on the date of the commencement of the examination, the department shall file with the board of county commissioners or with the city or town council a verified final report of the examination or audit, showing the shortage. The right of the officer to the office is then forfeited, and the office becomes vacant as of the date of the suspension of the officer. The person appointed to the office upon the suspension of the officer shall hold the office until the election and qualification of his successor, as provided by law.

(4) An officer whose right to office has been forfeited may, within ten (10) days after the filing of the department's final report or audit, begin in the district court of the proper judicial district a proceeding in quo warranto to test the right of his successor to hold the office, and to test the accuracy of the final report and audit of the department.

Section 100. There is a new section to be numbered 82-4513, R.C.M. 1947, which reads as follows:

**82-4513. Laws applicable to examinations.** All laws pertaining to examination of the books and accounts of county officers also apply to examination of the books and accounts of incorporated cities and towns and school districts of the first and second class.

Section 101. There is a new section to be numbered 82-4514, R.C.M. 1947, which reads as follows:

**82-4514. Entering department's report in minutes of city or town—publication.** Upon receipt of the department's report covering the examination of the affairs of an incorporated city or town, the mayor and the members of the city council or city commission shall enter the report in the minutes of the next regular meeting. The department shall, at the time the report is forwarded to the city or town officials, and for cities and towns with more than one thousand (1,000) residents send a copy to a newspaper of general circulation for publication. The department shall, at the time the report of examination is forwarded to the city or town officials in cities or towns with one thousand (1,000) or less residents, send a copy of its general comments section to the official newspaper of the city or town for publication. The report shall immediately be published in one issue of that newspaper. The city or town shall pay for publication at a rate to be agreed on but not to exceed that charged boards of county commissioners for printing the reports of the department.

Section 102. There is a new section to be numbered 82A-901.1, R.C.M. 1947, which reads as follows:

82A-901.1. **Functions of department.** The department and its units are responsible for administering laws pertaining to relationships between the state and local and federal governments, including, but not limited to, laws pertaining to:

- (1) Aeronautics (Title 1, chapters 1 to 9);
- (2) Highway traffic safety (Title 32, chapter 46);
- (3) Indian affairs (Title 82, chapter 27);
- (4) Planning and economic development (Title 82, chapter 37);
- (5) Examination of political subdivisions (Title 82, chapter 43);
- (6) Economic opportunity and poverty relief (Title 71, chapter 16);
- (7) County printing (Title 16, chapter 12).

Section 103. Section 82A-904, R.C.M. 1947, is amended to read as follows:

**"82A-904. Board of county printing — composition — qualification — allocation.** (1) *There is a board of county printing.*

(2) *The board consists of five (5) members appointed by the governor for terms of two (2) years. The members are:*

- (a) *Two (2) members of the printing industry;*
- (b) *Two (2) county commissioners;*
- (c) *One (1) member of the general public.*

(3) *The board is allocated to the department for administrative purposes only as prescribed in section 82A-108."*

Section 104. Section 82A-905, R.C.M. 1947, is amended to read as follows:

**"82A-905. Board of aeronautics—composition—qualification— allocation — designation.** (1) *There is a board of aeronautics.*

(2) *The board consists of seven (7) members. The members are:*

- (a) *One (1) member of the Montana pilots' association;*
- (b) *One (1) member of the Montana chamber of commerce;*
- (c) *One (1) member of the municipal league;*
- (d) *One (1) member of the county commissioners association;*
- (e) *One (1) person actively engaged in aviation education in this state;*
- (f) *One (1) person, representative of interstate commercial airline operators, who must at the time of appointment be an employee or official of an interstate commercial airline operator and a resident of this state;*
- (g) *One (1) person who must at the time of appointment be an active*

*base operator in this state or an official of a base operator in this state, of flying services or flying schools.*

(3) The board is *allocated* to the department for administrative purposes only as prescribed in section 82A-108.

(4) The board is designated as a quasi-judicial board for purposes of section 82A-112."

Section 105. Section 89-2107, R.C.M. 1947, is amended to read as follows:

"89-2107. **Records — inspection — fees — reports.** *The board of commissioners shall keep a complete book and record of the accounts, records, contracts, securities, minutes of meetings, and other matters of every kind pertaining to or belonging to the irrigation district, in the form prescribed by the department of intergovernmental relations. The department of intergovernmental relations shall prescribe forms for the use of irrigation districts and examine them as provided by law for the examination of the affairs of county officers. The books and records shall be open to the inspection of any landowner of the district the same as other public records. The failure of the board of commissioners to comply with this section is grounds for removal from office, and the county attorney of any county in which the irrigation district is situated shall prosecute ouster proceedings against any commissioner or commissioners. The cost of the proceedings is a charge against the irrigation district, and shall be paid as are other bills against the districts.*

(2) *If a district is appointed fiscal agent of the United States, or by the United States is authorized to make collections for or on behalf of the United States in connection with a federal irrigation project, the board of commissioners or its secretary shall at any time allow any officer or employee of the United States, when acting under the orders of the secretary of the interior, to have access to all books, records, and vouchers of the district which are in possession or control of the secretary or board.*

(3) *The board of commissioners shall annually file with the county clerk and recorder of the county in which the district is located, within ten (10) days after March 1 of each year, a sworn report showing the assets and liabilities of the district, the amount of money received during the preceding year, and the amount spent during that time, and shall publish the report at least once in a newspaper of the county.*

(4) *The department of intergovernmental relations shall notify the secretaries of the districts of the time of presenting the books and records at the courthouse for examination.*"

Section 106. Wherever the words "state examiner" appear in section 16-2618, the words "department of intergovernmental relations" are substituted therefor.

The publishers of the Revised Codes of Montana, 1947, are directed under the supervision of the supreme court of Montana, to make the substitutions enumerated in this section when reprinting sections or portions of sections of the Revised Codes in either supplements to or replacement volumes for the Revised Codes.

Section 107. Sections 1-201, 1-202, 1-312, 1-313, 1-317, 1-321, 1-504, 1-805, 1-926, 11-3253, 16-1225, 16-1227, 16-2925, 32-4603, 32-4604, 82-3703, 82-3704, 82-3707, 82-3709, 82A-902, 82A-903, 82A-906, R.C.M. 1947, are repealed.

Approved March 28, 1974

## CHAPTER NO. 349

AN ACT FOR THE CODIFICATION AND GENERAL REVISION OF  
LAWS RELATING TO THE DEPARTMENT OF HEALTH AND  
ENVIRONMENTAL SCIENCES.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 27-612, R.C.M. 1947, is amended to read as follows:

"27-612. **Definition of terms.** *Unless the context requires otherwise, in this act:*

(1) "Food" means *an* edible substance, beverage, or ingredient used, intended for use, or for sale for human consumption.

(2) "Food manufacturing establishment" means a commercial establishment, and buildings or structures in connection with *it*, used to manufacture or prepare food for sale or human consumption, but does not include milk producers' facilities, milk pasteurization facilities, milk product manufacturing plants, slaughterhouses, or meat packing plants.

(3) "Meat market" means a commercial establishment, and buildings or structures in connection with *it*, used to process, store, or display meat or meat products for sale to the public or for human consumption.

(4) "Food service establishment" means *a* fixed or mobile restaurant, coffee shop, cafeteria, short-order cafe, luncheonette, grille, tearoom, sandwich shop, soda fountain, food store serving food or beverage samples, food or drink vending machine, tavern, bar, cocktail lounge, night club, industrial feeding establishment, catering kitchen, commissary, private organization routinely serving the public, or similar place where food or drink is prepared, served, or provided to the public with or without charge. The term does not include establishments, vendors, or vending machines which sell or serve only packaged nonperishable foods in their unbroken original containers, or a private organization serving food only to its members.

(5) "Frozen food plant" means a place used to freeze, process, or store food including facilities used in conjunction with the frozen food plant and a place where individual compartments are offered to the public on a rental or other basis.

(6) "Person" means a person, partnership, corporation, association, cooperative group, or other entity engaged in operating, owning, or offering services of an establishment.

(7) "Establishment" means a food manufacturing establishment, meat market, food service establishment, frozen food plant, commercial food processor, or perishable food dealer.

(8) "State board" means the board of health *and environmental sciences, provided for in section 82A-605.*

(9) "Department" means the department of health *and environmental sciences, provided for in Title 82A, chapter 6.*

(10) "Perishable food dealer" means a person or commercial establishment which is in the business of purchasing and selling perishable food to the public."

Section 2. Section 27-616, R.C.M. 1947, is amended to read as follows:

**"27-616. Notice of denial or cancellation of license — demand for hearing.** If an application is denied, or a license canceled, the *department* shall notify the applicant or licensee in writing of the ground for the action. If the applicant or licensee desires a hearing *by the board* to show cause why the action should not be taken, he shall notify the *board* before the *tenth* day after notice of the action has been received."

Section 3. Section 27-702, R.C.M. 1947, is amended to read as follows:

**"27-702. Definition of terms.** *Unless the context requires otherwise, in this act:*

(a) "State board" or "board" means the board of health *and environmental sciences, provided for in section 82A-605.*

(b) "Department" means the department of health *and environmental sciences, provided for in Title 82A, chapter 6.*

(c) "Person" includes *an* individual, partnership, corporation, and association.

(d) "Food" means:

(1) *Articles* used for food or drink for man or other animals;

(2) *Chewing* gum; and

(3) *Articles* used for components of *these articles.*

(e) "Drug" means:

(1) *Articles* recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or *a* supplement to any of *these*;

(2) *Articles* intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;

(3) *Articles* (other than food) intended to affect the structure or function of the body of man or other animals;

(4) *Articles* intended for use as a component of any article specified in clause (1), (2) or (3); but does not include devices or their components, parts or accessories.



(f) "*Device*" (except when used in *subsection* (1) of this section and in sections 27-703 (j), 27-711 (f), 27-715 (c) and (o) and 27-719 (c)) means instruments, apparatus, and contrivances, including their components, parts, and accessories, intended:

(1) *For use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;*

(2) *To affect the structure or function of the body of man or other animals.*

(g) "*Cosmetic*" means:

(1) *Articles intended to be rubbed, poured, sprinkled, sprayed on, introduced into, or otherwise applied to the human body for cleansing, beautifying, promoting attractiveness, or altering the appearance;*

(2) *Articles intended for use as a component of these articles, except that the term does not include soap.*

(h) "*Official compendium*" means the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, official National Formulary, or a supplement to any of *these*.

(i) "*Label*" means a display of written, printed, or graphic matter on the immediate container of *an* article; and a requirement made by or under authority of this act that a word, statement, or other information appearing on the label shall not be considered to be complied with unless *the* word, statement, or other information also appears on the outside container or wrapper, if any there be, of the retail package of *the* article, or is easily legible through the outside container or wrapper.

(j) "*Immediate container*" does not include package liners.

(k) "*Labeling*" means labels and other written, printed, or graphic matter:

(1) *On an article or its containers or wrappers;*

(2) *Accompanying the article.*

(l) If an article is alleged to be misbranded because the labeling is misleading, or if an advertisement is alleged to be false because it is misleading, then in determining whether the labeling or advertisement is misleading there shall be taken into account not only representations made or suggested by statement, word, design, device, sound, or a combination of *these*, but also the extent to which the labeling or advertisement fails to reveal facts material in the light of *the* representations or material with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement or under conditions of use as are customary or usual.

(m) "*Advertisement*" means representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics.

(n) The representation of a drug, in its labeling or advertisement, as an antiseptic *is* considered to be a representation that it is a germicide, except in the case of a drug purporting to be, or represented as, an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder, or other use *which* involves prolonged contact with the body.

(o) "New drug" means:

(1) A drug the composition of which is such that *it* is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs, as safe and effective for use under the conditions prescribed, recommended, or suggested in *its* labeling ; or

(2) A drug the composition of which is such that *the* drug, as a result of investigations to determine its safety and effectiveness for use under *the* conditions *prescribed*, has become so recognized, but which has not, otherwise than in *the* investigations, been used to a material extent or for a material time under *the* conditions *prescribed*.

(p) "Contaminated with filth" applies to a food, drug, device, or cosmetic not securely protected from dust, dirt, and as far as may be necessary by all reasonable means, from foreign or injurious contaminations.

(q) The provisions of this act regarding the selling of food, drugs, devices, or cosmetics, shall be considered to include the manufacture, production, processing, packing, exposure, offer, possession, and holding of *these articles* for sale; the sale, dispensing, and giving of *these articles*; and the supplying or applying of *these* articles in the conduct of a food, drug, or cosmetic establishment.

(r) "Pesticide chemical" means a substance which, alone, in chemical combination, or in formulation with one (1) or more other substances is an "economic poison" under the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C., secs. 135-135k), as amended, and which is used in the production, storage, or transportation of raw agricultural commodities.

(s) "Raw agricultural commodity" means food in its raw or natural state, including fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing.

(t) "Food additive" means a substance, the intended use of which results or may be reasonably expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of food (including a substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food; and including a source of radiation intended for *this* use), if the substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures (or, in the case of a substance used in a food prior to January 1, 1958, through either scientific procedures or experience based on common use in food) to be safe under the conditions of its intended use; except that *this* term does not include:

(1) A pesticide chemical in or on a raw agricultural commodity;

(2) A pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of a raw agricultural commodity;

(3) A color additive;

(4) A substance used in accordance with a sanction or approval granted prior to the enactment of the Food Additives Amendment of 1958, pursuant to the Federal Act; the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*); or the Meat Inspection Act of March 4, 1907 (34 Stat. 1260), as amended and extended (21 U.S.C. 71 *et seq.*).

(u) (Color and color additive)

(1) "Color additive" means a material which:

(A) Is a dye, pigment, or other substance made by a process of synthesis or similar artifice, or extracted, isolated, or otherwise derived, with or without intermediate or final change of identity from a vegetable, animal, mineral, or other source; or

(B) When added or applied to a food, drug, or cosmetic, or to the human body is capable (alone or through reaction with other substance) of imparting color thereto; except that *this* term does not include material which has been or hereafter is exempted under the Federal Act.

(2) "Color" includes black, white, and intermediate grays.

(3) *Subsection (u) does not apply to a pesticide chemical, soil or plant nutrient, or other agricultural chemical solely because of its effect in aiding, retarding, or otherwise affecting, directly or indirectly the growth or other natural physiological process of produce of the soil and thereby affecting its color, whether before or after harvest.*

(v) "Federal Act" means the Federal Food, Drug and Cosmetic Act, as amended (Title 21 U.S.C. 301 *et seq.*).

(w) "Counterfeit drug" means a drug which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, or device, or any likeness thereof, of a drug manufacturer, processor, packer, or distributor other than the person who in fact manufactured, processed, packed, or distributed *the* drug and which falsely purports or is represented to be the product of, or to have been packed or distributed by *the* other drug manufacturer, processor, packer, or distributor.

(x) "Consumer commodity," except as otherwise specifically provided by this subsection, means any food, drug, device, or cosmetic as those terms are defined by this act or by the Federal Act and regulations pursuant thereto. *The term does not include:*

(1) Any tobacco or tobacco product;

(2) A commodity subject to packaging or labeling requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act or the provisions of the eighth paragraph under the heading "Bureau of Animal Industry" of the Act of March 4, 1913 (37 Stat. 832-833; 21 U.S.C. 151-157), commonly known as the Virus-Serum Toxin Act;

(3) A drug subject to section 17 (a) (B) or 16 (k) of this act, or section 503 (b) (1) or 506 of the Federal Act;

(4) A beverage subject to or complying with packaging or labeling requirements imposed under the Federal Alcohol Administration Act (27 U.S.C., et seq.); or

(5) A commodity subject to the Federal Seed Act (7 U.S.C. 1551-1610).

(y) "*Principal display panel*" means that part of a label that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.

(z) "*Package*" means a container or wrapping in which a consumer commodity is enclosed for use in the delivery or display of that consumer commodity to retail purchasers, but does not include:

(1) *Shipping* containers or wrappings used solely for the transportation of a consumer commodity in bulk or in quantity to manufacturers, packers, or processors, or to wholesale or retail distributors;

(2) *Shipping* containers or outer wrappings used by retailers to ship or deliver a commodity to retail customers if the containers and wrappings bear no printed matter pertaining to a particular commodity."

Section 4. Section 27-721, R.C.M. 1947, is amended to read as follows:

"27-721. **Adopting rules — hearings.** (1) The *department may adopt rules* for the efficient enforcement of this act. The *department may adopt* by reference the regulations *adopted* by the Food and Drug Administration under the Federal Act and the Fair Packaging and Labeling Act (15 U.S.C. 1451, et seq.).

(2) No hearing *is* required for *adoption* by reference of those regulations *adopted* under the Federal Act and the Fair Packaging and Labeling Act (15 U.S.C. 1451, et seq.)."

Section 5. Section 27-801, R.C.M. 1947, is amended to read as follows:

"27-801. **Definitions.** *Unless the context requires otherwise, in this act:* (1) "Flour" *means* the foods commonly known in the milling and baking industries as:

(a) *White* flour, also known as wheat flour or plain flour;

(b) *Bromated* flour;

(c) *Self-rising* flour, also known as self-rising white flour or self-rising wheat flour; and

(d) *Phosphated* flour, also known as phosphated white flour or phosphated wheat flour, but *excluding* whole wheat flour and special flours not used for bread, roll, bun, or biscuit baking, such as specialty cake and pancake flours.

(2) "White bread" means any bread made with flour whether baked in a pan or on a hearth or screen, and which is commonly known or usually represented and sold as white bread, including vienna bread, french bread, and italian bread.

(3) "Rolls" includes plain white rolls and buns of the semi-bread dough type, namely: soft rolls, such as hamburger rolls, hot dogs rolls, parker house rolls; and hard rolls, such as vienna rolls, kaiser rolls, yeast-raised sweet rolls, or sweet buns made with fillings or coatings, such as cinnamon rolls or buns and butterfly rolls.

(4) "Department" means the department of health *and environmental sciences, provided for in Title 82A, chapter 6.*

(5) "Person" means an individual, corporation, partnership, association, joint-stock company, trust, or any group of persons whether incorporated or not, engaged in the commercial manufacture or sale of flour, white bread, or rolls."

Section 6. Section 27-804, R.C.M. 1947, is amended to read as follows:

"27-804. **Enforcement — modification of requirements.** (1) *The department shall adopt rules and orders for the efficient enforcement of this act.*

(2) *When the vitamin and mineral requirements in sections 27-802 and 27-803 are no longer in conformity with the legally established standards governing the interstate shipment of enriched flour and enriched white bread or rolls, the department, in order to maintain uniformity between intrastate and interstate vitamin and mineral requirements for the foods under this act, shall modify or revise the requirements to conform with amended standards governing interstate shipments. The interstate standards referred to are those standards established under the Federal Food, Drug, and Cosmetic Act of 1938, as amended. (Title 21 U.S.C. 301 et seq.).*

(3) In the event of findings by the *department* that there is an existing or imminent shortage of *an* ingredient required by sections 27-802 or 27-803, and that because of *this* shortage the sale and distribution of flour, or white bread, or rolls may be impeded by the enforcement of this act, the *department* shall issue an order, to be effective immediately upon issuance, permitting the omission of *the* ingredient from flour, white bread, or rolls; and if *it* finds it necessary or appropriate, excepting *the* foods from labeling requirements until the further order of the *department*. *These* findings may be made without hearing, on the basis of an order or of factual information supplied by the appropriate federal agency or officer. In the absence of *an* order of the appropriate federal agency or factual information supplied by it, the *department* may, on receiving the sworn statements of ten (10) or more persons subject to this act that they believe a shortage exists or is imminent, shall, within twenty (20) days hold a public hearing at which *an* interested person may present evidence; and shall make findings based *on* the evidence presented. The *department* shall publish notice of *the* hearing at least ten (10) days *before it*. *When the department has reason to believe that the shortage no longer exists, it shall hold a public hearing, after at least ten (10) days notice has been given, at which an interested person may present evidence, and it shall make findings based on the evidence presented. If it finds that a shortage no longer exists, it shall issue an order effective not less than thirty (30) days after its publication revoking the previous order; however, undisposed flour stocks of flour on hand at the effective date of the revoca-*

tion order, or flour manufactured *before the* effective date for sale in this state may thereafter be lawfully sold or disposed of.

(4) *Orders and rules* adopted by the *department under* this act shall be published in the manner prescribed *in subsection (5) of this section*, and, within the limits specified by this act, shall become effective *on the date the department fixes*.

(5) *When* under this act publication of any notice, order, or rule is required, *the* publication shall be made at least once in at least one (1) daily newspaper of general circulation printed and published in this state.

(6) For the purpose of this act, the department may take samples for analysis, conduct examinations and investigations, and enter, at reasonable times, a factory, mill, bakery, warehouse, shop, or establishment where flour, white bread, or rolls are manufactured, processed, packed, sold, or held, or a vehicle being used for the transportation thereof and may inspect *the* place or vehicle and any flour, white bread, or rolls therein, and all pertinent equipment, materials, containers, and labeling."

Section 7. Section 34-305, R.C.M. 1947, is amended to read as follows:

"34-305. **Cancellation or denial of license — procedure.** (1) The department may cancel a license if *it* finds, after proper investigation, that the licensee has violated this act or a rule effective under this act, and the licensee has failed or refused to remedy or correct the violation. Submission to the department of an acceptable plan of correction within ten (10) days after receipt from the *department* of written notice of violation, and execution of an acceptable plan within the time prescribed in the written notice of approval *of the plan by the department* shall be a bar to prosecution for violation.

(2) A license *may not* be denied or canceled by the department without delivery to the applicant or licensee of a written statement of the grounds therefor or the charge involved and an opportunity to answer at a hearing before the board to show cause, if any, why the license should not be denied or canceled. In such case, *the* licensee must make a written request to the *board* for a hearing within ten (10) days after notice of the grounds or charges has been received.

(3) When a multiple type establishment is licensed by the department, the denial or cancellation of *the* license may affect the entire establishment or only a portion of *it* as determined by the *department* (a multiple type establishment includes two or more of the following: hotel, motel, or tourist home).

(4) *On* cancellation of a license or the right to operate one or more of the multiple type establishments under same license, the license certificate shall be returned to the *department* for destruction or deletion of types of establishment as the *department* may direct in *its* notice of cancellation.

(5) *When* the department *furnishes* evidence to the county attorney of a county in this state, *the* county attorney shall prosecute any person, firm, or corporation violating this act, or a rule effective under this act."

Section 8. Section 69-3401, R.C.M. 1947, is amended to read as follows:

"69-3401. **Definitions.** (1) "Board" means the *board of health and environmental sciences, provided for in section 82A-605.*

(2) "Sanitarian" means a person who is trained in physical, biological, and sanitary sciences to carry out *inspection* and educational duties in the field of environmental health.

(3) "Registered sanitarian" means a sanitarian registered under this act.

(4) "Certificate of registration" means a document showing the name of a registered sanitarian, the date of issue, serial number, the signatures of the designated members of the department authorized to grant the certificate, and *issued* under the seal of the board.

(5) "Department" means the department of health and environmental sciences, provided for in Title 82A, chapter 6."

Section 9. Section 69-3402, R.C.M. 1947, is amended to read as follows:

"69-3402. **Administration of chapter.** The department is responsible for administration of this chapter. The department shall maintain a record of all registration activities and a register disclosing names, dates, and addresses of all applicants for a certificate. The register constitutes prima facie evidence of all matters entered in the register. The department may adopt rules it determines necessary and proper for its function and administration."

Section 10. Section 69-3405, R.C.M. 1947, is amended to read as follows:

"69-3405. **Revocation or suspension.** The department may revoke or suspend the certificate of registration of any registrant for unprofessional conduct or the practice of any fraud or deceit in obtaining registration, or any gross negligence, incompetency or misconduct in the practice as a professional sanitarian, or upon the conviction of any crime involving moral turpitude. No revocation of certificate is effective until after a hearing, duly noticed, by the board."

Section 11. Section 69-3605, R.C.M. 1947, is amended to read as follows:

"69-3605. **Definitions.** Unless the context requires otherwise, in this act: (1) "Ambulance" means a privately or publicly owned motor vehicle that is especially designed, constructed, and equipped, which is maintained and used for the transportation of patients, including dual purpose police patrol cars and funeral coaches or hearses which otherwise comply with this act, but does not include a motor vehicle owned by, or operated under the direct control of the United States or this state of Montana.

(2) "Ambulance service" means a person who operates an ambulance.

(3) "Attendant" means a trained or otherwise qualified individual

responsible for the operation of an ambulance and the care of the patients whether or not the attendant also serves as driver.

(4) "Attendant-driver" means a person who is qualified as an attendant and a driver.

(5) "Driver" means an individual who drives an ambulance.

(6) "Dual purpose police patrol car" means a vehicle, operated by a police department, which is equipped as an ambulance, even though it is also used for patrol or other police purposes.

(7) "Department" means the *department of health and environmental sciences, provided for in Title 82A, chapter 6.*

(8) "Board" means the board of health and environmental sciences, provided for in section 82A-605.

(9) "Patient" means an individual who is sick, injured, wounded, or otherwise incapacitated or helpless.

(10) "Person" means *an individual, firm, partnership, association, corporation, company, group of individuals acting together for a common purpose, or organization of any kind, including a governmental agency other than the United States or this state.*

Section 12. Section 69-3608, R.C.M. 1947, is amended to read as follows:

"69-3608. **Cancellation or denial of licenses — procedure.** (1) The *department* may cancel a license if it finds that the licensee has violated provisions of or rules adopted under this act, and the licensee has failed or refused to remedy or correct the violation. Submission to the department of an acceptable plan of correction within ten (10) days after receipt from the *department* of written notice of violation, and execution of an acceptable plan within the time prescribed in the written notice of approval of the plan by the *department*, is a bar to prosecution for violation.

(2) The *department* may not deny or cancel a license without:

(a) Delivery to the applicant or licensee of a written statement of the grounds for the denial or cancellation or the charge involved;

(b) An opportunity to answer at a hearing before the board to show cause, if any, why the license should not be denied or cancelled. In this case, the licensee shall make written request to the board for a hearing within ten (10) days after notice of the grounds or charges has been received. If the board finds that the violations of this act do not constitute a danger to the public health and would produce a hardship without equal or greater benefit to the public, the board may grant an exception to the licensee for a period not to exceed one (1) year, during which time a license may not be denied the licensee nor may his license be canceled. Subsequent exceptions may be granted the licensee, each for a period not to exceed one (1) year, and each after a hearing before the board.

(3) On cancellation of a license, the license certificate shall be returned



to the *department* for destruction or deletion as the *department* may direct in *its* notice of cancellation.

(4) *When the department furnishes evidence to the county attorney of a county in this state, the county attorney shall prosecute any person, firm, or corporation violating this act, or the rules adopted under this act.*"

Section 13. Section 69-3610, R.C.M. 1947, is amended to read as follows:

"69-3610. **Inspections.** (1) The department shall make necessary investigations and inspections for enforcement of this act. *The department shall make regular inspections as the rules of the department may direct, and special inspections which the department may consider necessary.*

(2) *The department has free access at all reasonable hours to the establishments listed and defined in section 69-3605, to make inspections.*"

Section 14. Section 69-3906, R.C.M. 1947, is amended to read as follows:

"69-3906. **Definitions.** *Unless the context requires otherwise, in this act: (1) "Air contaminant" means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substances, or any combination thereof.*

(2) "Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants in *a quantity and for a duration which is or tends to be injurious to human health or welfare, animal or plant life, or property, or would unreasonably interfere with the enjoyment of life, property, or the conduct of business.*

(3) "Emission" means a release into the outdoor atmosphere of air contaminants.

(4) "Person" means *an individual, partnership, firm, association, municipality, public or private corporation, subdivision or agency of the state, trust, estate, or any other legal entity.*

(5) "Advisory council" means the air pollution control advisory council *provided for in section 82A-606.*

(6) "Board" means the board of health *and environmental sciences, provided for in section 82A-605.*

(7) "Department" means *the department of health and environmental sciences, provided for in Title 82A, chapter 6.*"

Section 15. Section 69-3907, R.C.M. 1947, is amended to read as follows:

"69-3907. **Administration.** *The department is responsible for the administration of this act.*"

Section 16. Section 69-3908, R.C.M. 1947, is amended to read as follows:

"69-3908. **Air pollution control advisory council — meetings — minutes — duties.** (1) *A chairman shall be elected by the advisory council from among its number.*

(2) The advisory council shall hold at least two (2) regular meetings each calendar year and shall keep a summary record of its proceedings which shall be open to the public for inspection. Special meetings may be called by the chairman and must be called by him *on* receipt of a written request signed by two (2) or more members of the advisory council. Notice of the time and place for meetings shall be given in advance to each member of the advisory council by the secretary.

(3) The secretary of the advisory council shall be a member of the staff of the *department*, designated by the *director of health and environmental sciences*. The secretary shall keep all records of meetings of, and actions taken by, the council. He shall keep the advisory council advised as to actions taken by persons in response to recommendations and orders issued under this act and shall perform other duties as determined by the advisory council, not inconsistent with rules and policies adopted *under* this act or specific authority otherwise given the advisory council.

(4) The advisory council *shall act in an advisory capacity to the department on matters relating to air pollution.*"

Section 17. Section 69-3909, R.C.M. 1947, is amended to read as follows:

"69-3909. **Powers of board.** *The board shall:*

(1) Adopt, amend, and repeal rules implementing and consistent with this act.

(2) Hold hearings relating to any aspect of or matter in the administration of this act, at a place designated by the board. The board may compel the attendance of witnesses and the production of evidence at hearings. The board shall designate an attorney to assist in conducting hearings and shall appoint a reporter who shall be present at all hearings and take full stenographic notes of all proceedings thereat, transcripts of which will be available to the public at cost.

(3) Issue orders necessary to effectuate the purposes of this act.

(4) *By rule require* access to records relating to emissions.

(5) Establish ambient air quality standards for the state."

Section 18. There is a new section to be numbered 69-3909.1, R.C.M. 1947, which reads as follows:

69-3909.1. **Powers of department.** The department shall:

(1) Enforce orders issued by the board by appropriate administrative and judicial proceedings;

(2) Secure necessary scientific, technical, administrative, and operational service, including laboratory facilities, by contract or otherwise;

(3) Prepare and develop a comprehensive plan for the prevention, abatement, and control of air pollution in this state;

(4) ° Encourage voluntary cooperation by persons and affected groups to achieve the purposes of this act;

(5) Encourage local units of government to handle air pollution problems within their respective jurisdictions on a cooperative basis, and provide technical and consultative assistance for this. If local programs are financed with public funds, the department may contract with the local government to share the cost of the program. However, the state share may not exceed thirty percent (30%) of the total cost.

(6) Encourage and conduct studies, investigations, and research relating to air contamination and air pollution and their causes, effects, prevention, abatement, and control;

(7) Determine by means of field studies and sampling the degree of air contamination and air pollution in the state;

(8) Make a continuing study of the effects of the emission of air contaminants from motor vehicles on the quality of the outdoor atmosphere of this state, and make recommendations to appropriate public and private bodies with respect to this.

(9) Collect and disseminate information and conduct educational and training programs relating to air contamination and air pollution;

(10) Advise, consult, contract, and cooperate with other agencies of the state, local governments, industries, other states, interstate and interlocal agencies, the United States, and any interested persons or groups;

(11) Consult, on request, with any person proposing to construct, install or otherwise acquire an air contaminant source or device or system for the control thereof, concerning the efficacy of this device or system, or the air pollution problems which may be related to the source, device, or system. Nothing in this consultation relieves a person from compliance with this act, rules in force under it, or any other provision of law.

(12) Accept, receive, and administer grants or other funds or gifts from public or private agencies including the United States, for the purpose of carrying out this act. Funds received under this section shall be deposited in the state treasury to the account of the department.

Section 19. Section 69-3912, R.C.M. 1947, is amended to read as follows:

"69-3912. **Inspections.** (1) *The department* may enter and inspect, at any reasonable time, any property, premises, or place, except a private residence, on or at which an air contaminant source is located or is being constructed or installed for the purpose of ascertaining the state of compliance with this act and rules in force *under it*.

(2) A person *may not* refuse entry or access to *an* authorized representative of the *department when it* requests entry for purposes of inspection, and who presents appropriate credentials. A person *may not* obstruct, hamper, or interfere with *an* inspection.

(3) At his request, the owner or operator of the premises shall receive a report setting forth all facts found which relate to compliance status."

Section 20. Section 69-3914, R.C.M. 1947, is amended to read as follows:

"69-3914. **Enforcement.** (1) *When the department has reason to believe that a violation of this act or a rule made under it has occurred, it may cause written notice to be served on the alleged violator. The notice shall specify the provision of this act or rule alleged to be violated, and the facts alleged to constitute a violation, and may include an order to take necessary corrective action within a reasonable period of time stated in the order. The order becomes final unless, no later than thirty (30) days after the date the notice is received, the person named requests in writing a hearing before the board. On receipt of the request, the board shall hold a hearing.*

(2) *If, after a hearing held under subsection (1) of this section, the board finds that violations have occurred, it shall either affirm or modify an order previously issued, or issue an appropriate order for the prevention, abatement, or control of the emissions involved or for the taking of other corrective action it considers appropriate. If, after hearing on an order contained in a notice the board finds that no violation is occurring, it shall rescind the order. An order issued as part of a notice or after hearing may prescribe the date by which the violation shall cease and may prescribe time limits for particular action in preventing, abating, or controlling the emissions.*

(3) *Instead of issuing the order provided for in subsection (1) of this section, the department may either:*

(a) *Require that the alleged violators appear before the board for a hearing at a time and place specified in the notice, and answer the charges complained of; or*

(b) *Initiate action under section 69-3921.*

(4) *This chapter does not prevent the board or department from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means.*

(5) *In connection with a hearing held under this section, the board may, and on application by a party shall, compel the attendance of witnesses and the production of evidence on behalf of the parties."*

Section 21. Section 69-3915, R.C.M. 1947, is amended to read as follows:

"69-3915. **Emergency procedure.** (1) *Any other law to the contrary notwithstanding, if the department finds that a generalized condition of air pollution exists and that it creates an emergency requiring immediate action to protect human health or safety, the department shall order persons causing or contributing to the air pollution to reduce or discontinue immediately the emission of air contaminants. Upon issuance of this order, the department shall fix a place and time, not later than twenty-four (24) hours thereafter, for a hearing to be held before the board. Not more than twenty-four (24) hours after the commencement of the hearing, and without adjournment, the board shall affirm, modify, or set aside the order of the department.*

(2) *In the absence of a generalized condition such as that referred to in subsection (1) of this section, if the department finds that emissions*

from the operation of one (1) or more air contaminant sources is causing imminent danger to human health or safety, *it* may order the person or persons responsible for the operation or operations in question to reduce or discontinue emissions immediately, without regard for section 69-3914. In *this* event, the requirements for hearing, and affirmance, modification, or setting aside of orders set forth in subsection (1) of this section apply.

(3) *This* section *does not* limit any power which the governor or any other officer may have to declare an emergency and act on the basis of *this* declaration, whether *the* power is conferred by statute, constitutional provisions, or inheres in the office."

Section 22. Section 69-3918, R.C.M. 1947, is amended to read as follows:

"69-3918. **Confidentiality of records.** (1) *Records* or other information concerning air contaminant sources which are furnished to or obtained by the board *or department*, and which, as certified by the owner or operator, relate to production or sales figures or to processes or production unique to the owner or operator or which would tend to affect adversely his competitive position, *are* only for the confidential use of the board *or department* in the administration of this act, unless the owner expressly *agrees* to their publication or availability to the general public.

(2) *This* section *does not* prevent the use of records or information by the board *or department* in compiling or publishing analyses or summaries relating to the general condition of the outdoor atmosphere, *if the* analyses or summaries do not identify *an* owner or operator or reveal information made otherwise confidential by this section."

Section 23. Section 69-3919, R.C.M. 1947, is amended to read as follows:

"69-3919. **Local air pollution control programs.** (1) A municipality or county may establish a local air pollution control program *on* being petitioned by fifteen per cent (15%) of the qualified electors *in* its jurisdiction, and may thereafter administer *in* its jurisdiction *the* air pollution control program which:

(a) Provides by ordinance or local law for requirements compatible with, more stringent, or more extensive than those imposed by sections 69-3913, 69-3915 and 69-3916 and rules issued *under these sections*;

(b) Provides for the enforcement of *these* requirements by appropriate administrative and judicial process;

(c) Provides for administrative organization, staff, financial, and other resources necessary to effectively and efficiently carry out its program; *and*

(d) *If the* program *is* consistent with this act and is approved by the board after a public hearing conducted *under* section 69-3909.

(2) If the board finds that the location, character, or extent of particular concentrations of population, air contaminant sources, or geographic, topographic, or meteorological considerations, or any *combination of these*

are such as to make impracticable the maintenance of appropriate levels of air quality without an areawide air pollution control program, the board may determine the boundaries within which *the* program is necessary and require it as the only acceptable alternative to direct state administration.

(3) If the board has reason to believe that an air pollution control program in force *under* this section is inadequate to prevent and control air pollution in the jurisdiction to which *the* program relates, or that the program is being administered in a manner inconsistent with this act, the board shall, on notice, conduct a hearing on the matter.

(4) If, after the hearing, the board determines that the program is inadequate to prevent and control air pollution in the jurisdiction to which it relates, or that it is not accomplishing the purposes of this act, it shall require that necessary corrective measures be taken within a reasonable time, not to exceed sixty (60) days.

(5) If the jurisdiction fails to take *these* measures within the time required, the *department* shall administer within such jurisdiction all of the provisions of this act. The *department's* control program *supersedes* all municipal or county air pollution laws, *rules*, ordinances, and requirements in the affected jurisdiction. The cost of *the* program shall be a charge on the municipality or county.

(6) If the board finds that the control of a particular class of air contaminant source because of its complexity or magnitude is beyond the reasonable capability of the local jurisdiction or may be more efficiently and economically performed at the state level, it may *direct the department* to assume and retain control over that class of air contaminant source. No charge *may* be assessed against the jurisdiction therefor. Findings made *under* this subsection may be either on the basis of the nature of the sources involved or on the basis of their relationship to the size of the communities in which they are located.

(7) A jurisdiction in which the *department* administers its air pollution control program *under* subsection (5) of this section may with the approval of the board establish or resume an air pollution control program which meets the requirements of subsection (1) of this section.

(8) A municipality or county may administer all or part of its air pollution control program in *cooperation* with one (1) or more municipalities or counties of this state or of other states."

Section 24. Section 69-3921, R.C.M. 1947, is amended to read as follows:

"69-3921. **Penalties.** (1) A person who violates this act, or a rule or order made *under it*, other than section 69-3918, is guilty of an offense and subject to a fine not to exceed one thousand dollars (\$1000). Each day of violation *constitutes* a separate offense.

(2) A person who willfully violates section 69-3918 is guilty of an offense and subject to a fine not to exceed one thousand dollars (\$1000).

(3) Action *under* subsections (1) or (2) of this section *are* not a bar to enforcement of this act, or of rules or orders made *under it*, by injunc-

tion or other appropriate remedy. The *department* may institute and maintain in the name of the state any enforcement proceedings.

(4) *This act does not* abridge, limit, impair, create, enlarge, or otherwise affect substantively or procedurally the right of a person to damage or other relief on account of injury to persons or property and to maintain an action or other appropriate proceeding.

(5) *Fines* collected shall be deposited to the state general fund."

Section 25. Section 69-3923, R.C.M. 1947, is amended to read as follows:

"69-3923. **Classification of property for taxation.** (1) Facilities, machinery, or equipment, attached or unattached to real property, utilized to reduce, eliminate, control, or prevent air pollution, shall be classified as Class Seven (7) for the purpose of taxation under section 84-301.

(2) The decision, whether the facilities, machinery, or equipment are utilized to reduce, eliminate, control, or prevent air pollution, shall be made by the *department* and approved by the state board of equalization."

Section 26. Section 69-4002, R.C.M. 1947, is amended to read as follows:

"69-4002. **Definitions.** *Unless the context requires otherwise*, in this chapter: (1) "Garbage" means putrescible animal and vegetable wastes resulting from handling, preparation, cooking, and consumption of food.

(2) "Refuse" means putrescible and nonputrescible solid wastes (except body wastes), including garbage, rubbish, street cleanings, dead animals, yard clippings, and solid market and solid industrial wastes.

(3) "Rubbish" means nonputrescible solid wastes, consisting of both combustible and noncombustible wastes, such as paper, cardboard, abandoned automobiles, tin cans, wood, glass, bedding, crockery, and similar materials.

(4) "Department" means the department of health and environmental sciences, provided for in Title 82A, chapter 6.

(5) "Board" means the board of health and environmental sciences, provided for in section 82A-605."

Section 27. Section 69-4010, R.C.M. 1947, is amended to read as follows:

"69-4010. **Section preserved.** Section 94-3542 is not affected by this act."

Section 28. Section 69-4102, R.C.M. 1947, is amended to read as follows:

"69-4102. **Definitions.** *Unless the context indicates otherwise*, in sections 69-4101 through 69-5816;

(1) "State board" or "board" means the board of health and environmental sciences, provided for in section 82A-605;

(2) "Department" means the department of health *and environmental sciences, provided for in Title 82A, chapter 6*;

(3) "Communicable disease" means a disease designated communicable by the board."

Section 29. Section 69-4104, R.C.M. 1947, is amended to read as follows:

**"69-4104. Board — officers — meetings — quorum — compensation.** (1) The board may adopt bylaws governing meetings. The *director of health and environmental sciences* shall serve as secretary to the board.

(2) The board shall meet once every two (2) months and may hold additional meetings on the call of the chair, at the request of the *director of health and environmental sciences*, or at the request of a majority of the members. If a member has three (3) unexcused absences from meetings in a calendar year, his position is vacant and the governor shall appoint a person to replace him.

(3) In suits or proceedings in which board actions are the subject of inquiry, meetings shall be *considered* to have been called and held unless the contrary is proven."

Section 30. Section 69-4106, R.C.M. 1947, is amended to read as follows:

**"69-4106. Functions, powers and duties of board.** The board shall:

(1) *Advise* the *department* in public health matters;

(2) *Hold* hearings, administer oaths, subpoena witnesses, and take testimony in matters relating to the duties of the board."

Section 31. Section 69-4110, R.C.M. 1947, is amended to read as follows:

**"69-4110. Functions, powers, and duties of department.** *The department shall:*

(1) *Study* conditions affecting the citizens of the state by making use of birth, death, and sickness records;

(2) *Make* investigations, disseminate information, and make recommendations for control of diseases and improvement of public health to persons, groups, or the public;

(3) *At* the request of the governor, administer any federal health program for which responsibilities are delegated to states;

(4) *Inspect* and work in conjunction with custodial institutions and Montana university system units periodically as necessary, and at other times on request of the governor;

(5) *After* each inspection made under subsection (4) of this section, submit a written report on sanitary conditions to the governor and to the director of institutions or executive secretary of the Montana university system and include recommendations for improvement in conditions, if necessary;



(6) *Advise* state agencies on location, drainage, water supply, disposal of excreta, heating, plumbing, sewer systems, and ventilation of public buildings;

(7) *Organize* laboratory services and provide equipment and personnel for those services;

(8) *Develop* and administer activities for the protection and improvement of dental health and supervise dentists employed by the state, local boards of health, or schools;

(9) *Develop* and administer a program to protect the health of mothers and children;

(10) *Conduct* health education programs;

(11) *Supervise* school and local public health nurses in the performance of their duties;

(12) *Consult* with the superintendent of public instruction on health measures for schools;

(13) *Develop* and administer a program for services to handicapped children including diagnosis, medical, surgical and corrective treatment, and after-care and related services;

(14) *Supervise* local boards of health;

(15) *Bring actions in court for the enforcement of the health laws and defend actions brought against the board or department; and*

(16) *Accept and expend federal funds available for public health services.*

(17) *Have the power to use personnel of local departments of health to assist in the administration of laws relating to public health."*

Section 32. Section 69-4111, R.C.M. 1947, is amended to read as follows:

"69-4111. **Legal adviser to state board and department.** The attorney general is legal adviser to the board and department. If the county attorney fails to act, with the approval of the attorney general the *department* may retain special counsel and compensate him from appropriations to the *department*. Either the county attorney of a county where a cause of action arises or the *department* may bring an action necessary to abate, restrain, or prosecute the violation of public health laws."

Section 33. Section 69-4112, R.C.M. 1947, is amended to read as follows:

"69-4112. **Quarantine measures — adoption and enforcement.** *The department may adopt and enforce quarantine measures against a state, county, or municipality to prevent the spread of communicable disease. A person who does not comply with quarantine measures shall, on conviction, be fined not less than ten dollars (\$10) nor more than one hundred dollars (\$100). Receipts from fines shall be deposited in the state general fund.*"

Section 34. Section 69-4117, R.C.M. 1947, is amended to read as follows:

**"69-4117. Schoolhouses — rules for lighting, heating, ventilation, and sanitary arrangements.** (1) The *department* shall adopt rules for lighting, heating, ventilation, plumbing, and sanitary arrangements for schoolhouses. Before a schoolhouse is constructed, plans must be submitted to the department for approval. A schoolhouse must conform to the rules adopted by the *department* before being used.

(2) Rules relating to building and equipment standards covered by the state or a municipal building code are effective after approval by the *department of administration* and filing with the secretary of state."

Section 35. Section 69-4208, R.C.M. 1947, is amended to read as follows:

**"69-4208. Definitions.** *Unless the context requires otherwise*, in this act:

(1) "Air contaminant" means fumes, dust, mist, smoke, other particulate matter, vapor, gas, odorous substances, or any combination thereof.

(2) "Emission" means a release into the workspace atmosphere of air contaminants or pollutants.

(3) "Occupational disease" means an illness, impairment, or disability that:

(a) Arises from the person's employment.

(b) Is caused by exposure to a substance or industrial practice which is hazardous to health.

(c) Has symptoms of an industrial disease which is known to have resulted from the same type of exposure in other cases.

(d) Is not the result of a person's contact or activities outside his employment.

(4) "Worker" is a person gainfully employed at any place.

(5) "Work place" is a place or location where a person is gainfully employed.

(6) "Occupational health" is a field of specialization concerned with the problems of health maintenance, productivity, and well-being of industrial workers which are related to and affected by the conditions of work and by the stress of the industrial environment.

(7) "Threshold limit values" means airborne concentrations of substances which it is believed that nearly all workers may be repeatedly exposed to day after day without adverse effect.

(8) "Pollutant" means air contaminants, heat, noise, vibration, ionizing radiation, and nonionizing radiation.

(9) "Sanitary facilities" means toilets, showers, dressing rooms, lunch rooms, sewage disposal systems, and potable water systems.

(10) "Department" means the department of health and environmental sciences, provided for in Title 82A, chapter 6.

(11) "Board" means the board of health and environmental sciences, provided for in section 82A-605.

(12) "Person" means an individual, partnership, firm, association, municipality, public or private corporation, subdivision or agency of the state, trust, estate or any other legal entity."

Section 36. Section 69-4209, R.C.M. 1947, is amended to read as follows:

"69-4209. **Administration.** Except as otherwise provided, the department is responsible for administration of this act."

Section 37. Section 69-4211, R.C.M. 1947, is amended to read as follows:

"69-4211. **Powers of board.** The board shall:

(1) Adopt, amend, and repeal rules implementing and consistent with this act.

(2) Hold hearings relating to any aspect of or matter in the administration of this act, at any place designated by the board. The board may designate the director of health and environmental sciences as the hearing officer at any hearing set by the board and authorize him to make rulings on evidence and conduct the hearing. The board or the director of health and environmental sciences as hearing officer may compel the attendance of witnesses and the production of evidence at hearings. The board shall designate an attorney to assist in conducting hearings and shall appoint a reporter who shall be present at all hearings and take full stenographic notes of all proceedings thereat, transcripts of which will be available to the public at cost.

(3) Issue orders necessary to carry out this act.

(4) Require access to records relating to emissions.

(5) Establish threshold limit values of airborne contaminants for the state as a whole."

Section 38. There is a new section to be numbered 69-4211.1, R.C.M. 1947, which reads as follows:

69-4211.1. **Powers of department.** The department shall:

(1) Enforce board orders by appropriate administrative and judicial proceedings.

(2) Secure necessary scientific, technical, administrative, and operational service, including laboratory facilities, by contract or otherwise.

(3) Prepare and develop a comprehensive plan for the prevention, abatement, and control of occupational disease.

(4) Encourage voluntary cooperation by persons and affected groups to achieve the purpose of this act.

(5) Encourage and conduct studies, investigations, and research relating to occupational diseases and their causes, effects, prevention, abatement, and control.

(6) Determine by means of field studies and sampling the degree of health hazard at any work place in the state.

(7) Collect and disseminate information and conduct educational and training programs relating to the prevention and control of occupational diseases.

(8) Advise, consult, contract, and cooperate with other agencies of the state, local governments, industries, other states, interstate and interlocal agencies, the United States, and interested persons or groups.

(9) Accept, receive, and administer grants or other funds or gifts from public or private agencies, including the United States for the purpose of carrying out this act. Funds received by the department under this section shall be deposited in the state treasury to the account of the department.

Section 39. Section 69-4213, R.C.M. 1947, is amended to read as follows:

"69-4213. **Inspection.** (1) *The department* may enter and inspect, at a reasonable time, property, premises, or a place, except a private residence, where a person *is* or will be employed to ascertain the state of compliance with this act and rules *adopted under it*.

(2) A person *may not* refuse entry or access to *the department when it* requests entry for purposes of inspection. A person *may not* obstruct, hamper, or interfere with *an* inspection.

(3) At his request, the owner or operator of the premises shall receive a report setting forth facts found which relate to compliance status."

Section 40. Section 69-4215, R.C.M. 1947, is amended to read as follows:

"69-4215. **Enforcement.** (1) *When the department* has reason to believe that a violation of this act or rule made *under this act* has occurred, *it* may *have* written notice served *on the* alleged violator, and the facts alleged to constitute a violation, and may include an order to take necessary corrective action within a reasonable period of time stated in the order. *An order becomes* final unless, no later than thirty (30) days after the date of notice is received, the person named *requests* in writing a hearing before the board. *On* receipt of a request, the board shall hold a hearing.

(2) If, after a hearing held *under* subsection (1) of this section, the board finds that a violation *has* occurred, it shall either affirm or modify *an* order previously issued, or issue an appropriate order for the prevention, abatement, or control of the emissions involved or for the taking of other corrective action it *considers* appropriate. If, after hearing on an order contained in a notice, the board finds that no violation is occurring, it shall rescind the order. *An* order issued as part of a notice or after

hearing may prescribe the date by which the violation shall cease and may prescribe time limits for particular action in preventing, abating, or controlling the pollutant.

(3) *Instead* of issuing the order provided for in subsection (1) of this section, the board may either:

(a) Require that the alleged violator appear before it for a hearing at a time and place specified in a notice, and answer the charges complained of; or

(b) Initiate action *under* section 69-4221.

(4) *This act does not* prevent the board from making efforts to obtain voluntary compliance through warning, conference, or other appropriate means.

(5) In connection with a hearing held *under* this section, the board may, and *on* application by a party shall, compel the attendance of witnesses and the production of evidence on behalf of parties."

Section 41. Section 69-4216, R.C.M. 1947, is amended to read as follows:

"69-4216. **Emergency procedure.** (1) Any other law to the contrary notwithstanding, if the *department* finds that a generalized hazard at a work place exists and that it creates an emergency requiring immediate action to protect human health, the *department* shall order persons causing or contributing to the hazard to reduce or discontinue immediately the emissions creating the hazard. Upon issuance of *this* order, the *department* shall fix a place and time, not later than seventy-two (72) hours thereafter, for a hearing to be held before the board. Not more than twenty-four (24) hours after the commencement of *the* hearing, and without adjournment, the board shall affirm, modify, or set aside the order of the *department*.

(2) In the absence of a generalized condition as that referred to in subsection (1) of this section, if the *department* finds that emissions from *an* operation *are* causing imminent danger to human health, *it* may order the person responsible for the operation in question to reduce or discontinue emissions immediately, without regard to section 69-4215. In *this* event, the requirements for hearing and affirmance, modification, or setting aside of orders provided in section 69-4215 apply.

(3) *This* section *does not* limit any power which the governor or any other officer may have to declare an emergency and act on the basis of *the* declaration, whether *the* power is conferred by statute, constitutional provisions, or inheres in the office."

Section 42. Section 69-4218, R.C.M. 1947, is amended to read as follows:

"69-4218. **Hearings and judicial review.** (1) No rule or amendment or repeal thereof shall take effect except after public hearing on due notice. Such notice shall be given by public advertisement not less than twenty (20) or more than thirty (30) days prior to the date set for *the* hearing.

(2) Nothing in this section *requires* a hearing prior to the issuance of an emergency order pursuant to section 69-4216.

(3) Any person aggrieved by any order of the board may apply for rehearing upon one (1) or more of the following grounds, and upon no other grounds:

- (a) The board acted without or in excess of its powers.
- (b) The order was procured by fraud.
- (c) The order is contrary to the evidence.

(d) The applicant has discovered new evidence, material to him, which he could not, with reasonable diligence, have discovered and produced at the hearing.

(e) Competent evidence was excluded to the prejudice of the applicant. The petition must be in such form and filed in such time as the board shall prescribe."

Section 43. Section 69-4219, R.C.M. 1947, is amended to read as follows:

"69-4219. **Confidentiality of records.** (1) *Records* or other information concerning pollutants or operations which are furnished to or obtained by the board *or department*, and which, as certified by the owner or operator, relate to production or sales figures or to processes or production unique to the owner or operator or which would tend to affect adversely his competitive position, *are* only for the confidential use of the board *or department* in the administration of this act, unless the owner expressly *agrees* to their publication or availability to the general public.

(2) *This section does not* prevent the use of records or information by the board *or department* in compiling or publishing analyses or summaries relating to the general condition at the work place, *if the* analyses or summaries do not identify *an* owner or operator or reveal information made otherwise confidential by this section."

Section 44. Section 69-4221, R.C.M. 1947, is amended to read as follows:

"69-4221. **Penalties.** (1) A person who violates this act relating to limitations of levels, concentrations, or quantities of emissions of various pollutants from *a* source determined to be necessary to prevent, abate, or control occupational diseases (unless in compliance with this act) *is* guilty of an offense and subject to a fine not to exceed one thousand dollars (\$1,000). Each day of violation *constitutes* a separate offense.

(2) Proceedings under this section *are* not a bar to enforcement of this act, or of rules or orders made *under it* by injunction or other appropriate remedy. The *department* may institute and maintain in the name of the state *these* enforcement proceedings.

(3) *This act does not* abridge, limit, impair, create, enlarge, or otherwise affect substantively or procedurally the right of *a* person to damage or other relief on account of injury to persons or property and to maintain *an action* or other appropriate proceeding.

(4) *Fines* collected shall be deposited to the state general fund."

Section 45. Section 69-4304, R.C.M. 1947, is amended to read as follows:

**"69-4304. Functions, powers, and duties of department.** (1) *The department shall;*

(a) *Accept, spend, and distribute federal funds available for tuberculosis control;*

(b) *Collect and study data on the incidence of tuberculosis.*

(2) *The department may, if appropriate, contract with federal agencies or other state agencies for receipt and expenditure of federal funds."*

Section 46. Section 69-4316, R.C.M. 1947, is amended to read as follows:

**"69-4316. Transportation expenses — payment by county.** Expenses of transporting a person to a hospital for commitment shall be paid from the general fund of the county from which the person is committed. The charge for care, treatment, and maintenance at *Galen* state hospital shall be at the rate fixed by law."

Section 47. Section 69-4317, R.C.M. 1947, is amended to read as follows:

**"69-4317. Facilities for diagnosis and treatment of tuberculosis.** *Galen* state hospital shall maintain facilities to carry out this chapter."

Section 48. Section 69-4401, R.C.M. 1947, is amended to read as follows:

**"69-4401. Definitions.** Unless the context *requires* otherwise, in this chapter:

(1) "Vital statistics" includes the registration, preparation, transcription, collection, compilation, and preservation of data pertaining to births, adoptions, legitimations, deaths, fetal deaths, marital status, and incidental supporting data.

(2) "Live birth" means the birth of a child who shows evidence of life after being entirely outside the mother.

(3) "Fetal death" means a birth after twenty (20) weeks of gestation which is not a live birth.

(4) "Dead body" means a lifeless human body or parts of a body from which it reasonably may be concluded that death occurred recently.

(5) "Person in charge of interment" means a person who places or causes to be placed, a dead body or the ashes after cremation, in a grave, vault, urn, or other receptacle, or otherwise disposes of the body.

(6) "Physician" means a person legally authorized to practice medicine in this state.

(7) "Local registrar" means a person appointed by the *department of health and environmental sciences* to act as *its* agent in administering this chapter in the area set forth in the letter of appointment."

Section 49. Section 69-4404, R.C.M. 1947, is amended to read as follows:

**"69-4404. Disclosure of data in vital statistics records — inspection of records.** It is unlawful to disclose data in the vital statistics records of the department, local registrars, or county clerk and recorder unless disclosure is authorized by law and approved by the *department*. The *department* may not permit inspection of the records or issue copies of a certificate unless it is satisfied that the applicant has a direct and tangible interest in the data recorded and that the information is necessary for the determination of personal or property rights."

Section 50. Section 69-4405, R.C.M. 1947, is amended to read as follows:

**"69-4405. Disclosure of information to governmental agencies.** The board may direct the *department* to disclose information from its records to federal, state, county, or municipal agencies for use only as prescribed by the board. If no identification of individuals is made, the board may permit the use of data contained in vital statistics records for research purposes."

Section 51. Section 69-4409, R.C.M. 1947, is amended to read as follows:

**"69-4409. Local registrars — appointment — supervision.** The *department* shall:

- (1) *Appoint* local registrars;
- (2) *Supervise* local registrars and other persons required to comply with this act."

Section 52. Section 69-4420, R.C.M. 1947, is amended to read as follows:

**"69-4420. Substitute birth certificate — procedure for issuance.** The procedure for issuing a substitute birth certificate for a person born in Montana and adopted is:

- (1) *Before* the sixteenth day of the month following the order of adoption the clerk of the district court shall forward a certified copy of the final order of adoption to the *department*;
- (2) *The department* shall prepare a substitute certificate containing:
  - (a) *The* new name of the adopted person;
  - (b) *The* true date and place of birth and sex of the adopted person;
  - (c) *Statistical* facts concerning the adoptive parents in place of the natural parents;
  - (d) *The* words "*department of health and environmental sciences*" substituted for the words "attendant's own signature;" *and*
  - (e) *Dates* of recording as shown on the original birth certificate."

Section 53. Section 69-4421, R.C.M. 1947, is amended to read as follows:



**"69-4421. Substitute birth certificate — procedure for recording.**

(1) The procedure for recording a substitute certificate of birth for a person born in Montana and adopted is:

(a) *The department* shall send copies of the substitute certificate to the local registrar and to the county clerk and recorder;

(b) *The* local registrar and county clerk and recorder shall immediately enter the substitute birth certificate in *its* files and forward copies of the original birth record to the *department*;

(c) *The department* shall seal original birth records and open them only on demand of the adopted person if of legal age, or on order of a court.

(2) On receipt of a certified copy of a court order annulling an adoption, the *department* shall restore the original certificate to its place in *its* files and notify the local registrar and county clerk and recorder."

Section 54. Section 69-4502, R.C.M. 1947, is amended to read as follows:

**"69-4502. General supervision by department of health and environmental sciences.** *The department of health and environmental sciences has general supervision over local boards.*"

Section 55. Section 69-4503, R.C.M. 1947, is amended to read as follows:

**"69-4503. Federal funds — acceptance — allocation.** *The department may accept funds for public health from an agency of the federal government, or from any other agency or person, and allocate funds to local boards.*"

Section 56. Section 69-4510, R.C.M. 1947, is amended to read as follows:

**"69-4510. Local health officers — powers and duties.** (1) Local health officers, or their authorized representatives, shall:

(a) *Make* inspections for sanitary conditions;

(b) *As directed by the* local board, issue written orders for the destruction and removal of filth which might cause disease;

(c) *With* written approval of the *department*, order buildings or facilities where people congregate closed during epidemics;

(d) *On* forms provided by the department, report communicable diseases to the *department* each week;

(e) *Before* the first day of January, April, July, and October, give a report to the local board of sanitary conditions in the county, city, city-county, or district, together with a detailed account of his activities on forms and containing information required by the department;

(f) *Before* the tenth day after the report is given to the local board, send a copy of the report required by subsection (1) (e) of this section to the department;

(g) *As prescribed by rules adopted by the department, establish and maintain quarantines;*

(h) *As prescribed by rules adopted by the department, supervise the disinfection of places at the expense of the local board when a period of quarantine ends;*

(i) *Notify the department of his appointment and changes in membership of the local board;*

(j) *File a complaint with the appropriate court if this chapter or rules adopted by the local board or state department under this chapter are violated.*

(2) With approval of the *department*, local health officers may forbid persons to assemble in a place if the assembly endangers public health.

(3) A local health officer, who is a physician, may be placed in charge of a communicable disease hospital, but a local health officer, who is a physician, is not required to act as a physician to the indigent. A local health officer, who is not a physician, shall not act as a physician to anyone."

Section 57. Section 69-4602, R.C.M. 1947, is amended to read as follows:

**"69-4602. Education campaigns by department of health and environmental sciences — cooperation with federal agencies — use of federal funds.** *The department of health and environmental sciences shall undertake to prevent, control, and prescribe treatments for venereal diseases and may conduct education campaigns for this purpose. The department shall cooperate with federal agencies and may expend federal funds made available to the state for the prevention, control, and treatment of venereal diseases.*"

Section 58. Section 69-4603, R.C.M. 1947, is amended to read as follows:

**"69-4603. Acceptance and disbursement of federal funds for control of venereal disease.** *The department may accept federal funds available for the prevention, control, and treatment of venereal diseases, deposit funds in the state treasury, and disburse the funds.*"

Section 59. Section 69-4802, R.C.M. 1947, is amended to read as follows:

**"69-4802. Definitions.** *Unless the context requires otherwise in this chapter:*

(1) "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings including discharge from human beings or animals together with ground water infiltration and surface water present.

(2) "Industrial waste" means any waste substance from the process of business or industry, or from the development of any natural resource together with any sewage that may be present;

(3) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, tar, chemicals, dead animals, sediment, and all other substances that may pollute state waters;

(4) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or other wastes creating a hazard to human health;

(5) "Pollution" means contamination, or other alteration of the physical, chemical, or biological properties of any state waters, *which* exceeds that permitted by Montana water quality standards, including, but not limited to, standards relating to change in temperature, taste, color, turbidity, or odor, or discharge of any liquid, gaseous, solid, radioactive, or other substance into any state water *which* will or is likely to create a nuisance or render *the* waters harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife. A discharge which is permitted by Montana water quality standards is not "pollution" *under* this chapter.

(6) "Sewerage system" means *a* device for collecting or conducting sewage, industrial wastes, or other wastes to an ultimate disposal point;

(7) "Treatment works" means works installed for treating or holding sewage, industrial wastes, or other wastes;

(8) "Disposal system" means a system for disposing of sewage, industrial, or other wastes, and includes sewerage systems and treatment work;

(9) "State waters" means any body of water, irrigation system, or drainage system either surface or underground; *however*, this *subsection* *does* not apply to irrigation waters where the waters are used up within the irrigation system and *the* waters are not returned to any other state waters;

(10) "Person" means the state, *a* political subdivision of the state, institution, firm, corporation, partnership, individual, or other entity;

(11) "Council" means the state water pollution *control* advisory council *provided for in section 82A-607*;

(12) "Board" means the board of health *and environmental sciences*, *provided for in section 82A-605*;

(13) "Department" means the department of health *and environmental sciences*, *provided for in Title 82A, chapter 6*;

(14) "Local department of health" means the staff, including health officers, employed by a county, city, city-county, or district board of health;

(15) "Point source" means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating craft, from which pollutants are or may be discharged;

(16) "Owner or operator" means any person who owns, leases, operates, controls or supervises a point source;

(17) "Standard of performance" means a standard adopted by the board for the control of the discharge of pollutants which reflects the greatest degree of effluent reduction achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, where practicable, a standard permitting no discharge of pollutants;

(18) "Effluent standard" means any restriction or prohibition on quantities, rates and concentrations of chemical, physical, biological and other constituents which are discharged into state waters."

Section 60. Section 69-4805, R.C.M. 1947, is amended to read as follows:

"69-4805. **Administration of chapter.** (1) Except as otherwise provided, the department is responsible for administration of this chapter.

(2) The department may use *its* personnel *and those* of the local departments of health as necessary to administer this act."

Section 61. Section 69-4808.1, R.C.M. 1947, is amended to read as follows:

"69-4808.1. **Board to control state matching funds for construction of water pollution control facilities—limit on funds.** (1) The board shall control funds appropriated by the state for the purpose of providing matching funds to local governments for the construction of water pollution control facilities. The board shall *adopt* rules and establish standards for the use of such matching funds, by local governments, in the planning and construction of local water pollution control facilities.

(2) *Funds* appropriated *under* this act shall be used only to provide an increase in the aid from the federal government not otherwise obtainable and *may not* exceed twenty-five per cent (25%) of the total cost of the project as participated in by the federal water pollution control administration."

Section 62. Section 69-4808.2, R.C.M. 1947, is amended to read as follows:

"69-4808.2. **Duties of board.** (1) The board shall:

(a) *Establish* and modify the classification of all waters in accordance with their present and future most beneficial uses.

(b) *Formulate* standards of water purity and classification of water according to its most beneficial uses, giving consideration to the economics of waste treatment and prevention.

(c) *Review* from time to time, at intervals of not more than three (3) years, established classifications of waters and standards of water purity and classification, *and*:

(i) *The* classifications, standards, and rules *which* have been adopted by the state water pollution control council under section 69-4813 *are*, without necessity of a hearing, initially adopted by the board.

(ii) *In* revising classifications or standards or in adopting new classifi-

cations or standards the board may not so formulate standards of water purity or classify any state water as to lower any water quality standard applicable to any state water below the level applicable under the classifications and standards adopted by the state water pollution control council under section 69-4813.

(iii) *The board shall require that any state waters whose existing quality is better than the established standards as of the date on which the standards become effective be maintained at that high quality unless it has been affirmatively demonstrated to the board that a change is justifiable as a result of necessary economic or social development and will not preclude present and anticipated use of these waters; and*

(iv) *The board shall require any industrial, public, or private project or development, which would constitute a new source of pollution or an increase source of pollution to high quality waters, referred to in subsection (1)(c)(iii), to provide the degree of waste treatment necessary to maintain that existing high water quality.*

(d) *Advise, consult, and co-operate with other states, other state and federal agencies, affected groups, political subdivisions, and industries in the formulation of a comprehensive plan to prevent and control pollution.*

(e) *Adopt rules governing application for permits to discharge sewage, industrial wastes, or other wastes into state waters including rules requiring the filing of plans and specifications relating to the construction, modification, or operation of disposal systems.*

(f) *Adopt rules governing the issuance, denial, modification, or revocation of permits, and:*

(i) *The rules shall allow the issuance or continuance of a permit only if the department finds that operation consistent with the limitations of the permit will not result in pollution of any state waters, except that;*

(ii) *The rules may allow the issuance of a temporary permit under which pollution may result, for a period no longer than three (3) years and subject to no extension, if the department finds that the issuance of a permit is proper for obtaining compliance with the applicable standards;*

(iii) *The rules shall provide that the department may revoke a permit if the department finds that the holder of the permit has violated its terms, unless the department also finds that the violation was accidental and unforeseeable and that the holder of the permit corrected the condition resulting in the violation as soon as was reasonably possible; and*

(iv) *A person introducing a new source or increased source of sewage, industrial waste, or other wastes as defined in section 69-4802 (1), (2), and (3), to waters and tributaries of waters classified as A-open-D-1 or higher by the board shall be required to install and maintain the highest and best degree of treatment works necessary to maintain adequately this classification, as defined in section 69-4802 (7) before the issuance of a permit by the department.*

(g) *Hold hearings necessary for the proper administration of this chapter.*

(h) *Adopt rules for the administration of this chapter.*

(i) *Adopt* pretreatment standards for waste-water discharged into a municipal disposal system, adopt effluent standards as defined in section 69-4802(20), and establish standards of performance for new point source discharges.

(2) The board may:

(a) accept loans and grants from the federal government and other sources to carry out the provisions of this chapter; and

(b) establish minimum requirements for the treatment of wastes."

Section 63. Section 69-4809.1, R.C.M. 1947, is amended to read as follows:

"69-4809.1. **Duties of department.** (1) The department shall:

(a) *Issue*, suspend, revoke, modify, or deny permits to discharge sewage, industrial wastes, or other wastes to state waters, consistently with rules made by the board;

(b) *Examine* and approve or disapprove plans and other information needed to determine whether a permit should be issued or suggest changes in plans as a condition to the issuance of a permit;

(c) *Clearly* specify in any permit any limitations imposed as to the volume, strength, and other significant characteristics of the waste to be discharged;

(d) *Collect* and furnish information relating to the prevention and control of water pollution;

(e) *Conduct* or encourage necessary research and demonstrations concerning water pollution;

(f) *Issue* orders to any person to clean up any material which he or his employee, agent, or subcontractor has accidentally or purposely dumped, spilled, or otherwise deposited in or near state waters and which may pollute them."

Section 64. Section 69-4812, R.C.M. 1947, is amended to read as follows:

"69-4812. **Water pollution control advisory council — officers — meetings — designating of deputy by member.** (1) The council *provided for in section 82A-607* shall select a chairman from among its members. The *director of health and environmental sciences* shall designate a member of the staff of the department to act as secretary to the council. The secretary shall keep records of all actions taken by the council.

(2) It shall hold at least two (2) regular meetings each calendar year. Special meetings shall be held at the call of the chairman or *on* written request of two (2) or more members.

(3) Each member may, by filing with the secretary, designate a deputy or alternate to perform his duties.

(4) *The council shall only act in an advisory capacity to the department on matters relating to water pollution.*"

Section 65. Section 69-4820, R.C.M. 1947, is amended to read as follows:

**"69-4820. Violation of chapter or rule — notice to violator — hearing before board — notice, procedure, order, rehearing.** (1) *When the department has reason to believe that a violation of this chapter or a rule made under it has occurred, it shall have written notice served personally or by mail on the alleged violator or his agent. The notice shall state the provision alleged to be violated, the facts alleged to constitute the violation, the nature of corrective action which the department requires, and the time within which the action is to be taken. For the purposes of this chapter, service by mail is complete on the date of mailing.*

(2) *In a notice given under subsection (1) of this section, the department may require the alleged violator to appear before the board for a public hearing and to answer the charges made against him. The hearing shall be held no sooner than fifteen (15) days after service of the notice, except that the board may set an earlier date for hearing if it is requested to do so by the alleged violator. The board may set a later date for hearing at the request of the alleged violator if the alleged violator shows good cause for delay.*

(3) *If the department does not require an alleged violator to appear before the board for a public hearing, he may request the board to conduct the hearing. The request shall be in writing and shall be filed with the department no later than thirty (30) days after service of a notice under subsection (1) of this section. If a request is filed, a hearing shall be held within a reasonable time.*

(4) *If a hearing is held under this section, it shall be public and shall, if the board considers it practicable, be held in a county in which the violation is alleged to have occurred.*

(5) *After a hearing or on failure of an alleged violator to make a timely request for a hearing, the board may issue an appropriate order for the prevention, abatement, or control of pollution. It shall state the date or dates by which a violation shall cease and may prescribe timetables for necessary action in preventing, abating, or controlling the pollution. The alleged violator may petition the board for a rehearing, on the basis of new evidence, which petition the board may grant for good cause shown.*

(6) *In addition to or instead of issuing an order, the board may direct the department to initiate appropriate action for recovery of a penalty under section 69-4823."*

Section 66. Section 69-4821, R.C.M. 1947, is amended to read as follows:

**"69-4821. Judicial remedies — review by district court.** (1) *An appeal of an order of the board shall be in the district court of the county in which the alleged source of pollution is located.*

(2) A person interested in the order may intervene, in the manner provided by the Rules of Civil Procedure, if he shows good cause. An intervenor is a party for the purposes of this chapter.

(3) The attorney general shall represent the board if requested, or the *department* may appoint special counsel for the proceedings, subject to the approval of the attorney general.

(4) The initiation of an action for review or the taking of an appeal *does* not stay the effectiveness of any order of the board, unless the court finds that there is probable cause to believe:

(a) *That* refusal to grant a stay will cause serious harm to the affected party, and

(b) *That* any violation found by the board:

(i) *Will* not continue, or

(ii) *If* it does continue, any harmful effects on state waters will be remedied immediately on the cessation of the violation.

(5) If a court does not stay the effectiveness of an order of the board, it may enforce compliance with that order by issuing a temporary restraining order or an injunction at the request of the board."

Section 67. Section 69-4823, R.C.M. 1947, is amended to read as follows:

**"69-4823. Penalties for violation of provisions, rule, permit, effluent standard, or order — purpose and construction of chapter.**

(1) A person who violates a rule, permit, effluent standard, or order issued *under* the provisions of this act shall be guilty of an offense and subject to a civil penalty not to exceed ten thousand dollars (\$10,000). Each day of violation constitutes a separate offense.

(2) A person who willfully violates section 69-4806, R.C.M. 1947, or any pretreatment standard established pursuant to this act is guilty of an offense and subject to a fine not to exceed twenty-five thousand dollars (\$25,000) per day of violation or by imprisonment for not more than one (1) year or both. Following an initial conviction under this subsection, subsequent convictions shall subject a person to a fine of not more than fifty thousand dollars (\$50,000) per day of violation, or imprisonment for not more than two (2) years, or both.

(3) Action *under subsection* (1) of this section does not bar enforcement of this chapter or of rules or orders issued *under* it by injunction or other appropriate remedy. The *department* shall institute and maintain any enforcement proceedings in the name of the state.

(4) A purpose of this chapter is to provide additional and cumulative remedies to prevent, abate, and control the pollution of state waters. This chapter *does* not abridge or alter rights of action or remedies in equity or under the common law or statutory law, criminal or civil, nor *does* this chapter or *an* act done *under it* estop the state or a municipality or person as owners of water rights or otherwise in the exercise of their rights in equity or under the common law or statutory law to suppress nuisances or to abate pollution.

(5) *Fines* collected shall be deposited to the state general fund.



(6) Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan or other document filed or required to be maintained under this act or who falsifies, tampers with or knowingly renders inaccurate any monitoring device or method required to be maintained under this act shall upon conviction be punished by a fine of not more than ten thousand dollars (\$10,000), or by imprisonment for not more than six (6) months or both.

(7) In a civil action initiated by the department under this act, the department may ask for and the court is authorized to assess a violator for the cost of the investigation or monitoring survey which led to the establishment of the violation, and any expense incurred by the state in removing, correcting or terminating any of the adverse effects upon water quality resulting from the unauthorized discharge of pollutants."

Section 68. Section 69-4825, R.C.M. 1947, is amended to read as follows:

"69-4825. **Injunctions.** The *department* may bring an action for an injunction against the continuation of *an* alleged violation which has been the basis of suspension or revocation of a permit by the department or against *a* person who fails to comply with an emergency order issued by the department *under* section 69-4824 or *a* final order of the board. The court to which the *department* applies for an injunction may issue a temporary injunction, if it finds that there is reasonable cause to believe that the allegations of the *department* are true, and it may issue a temporary restraining order pending action on the temporary injunction."

Section 69. Section 69-4826, R.C.M. 1947, is amended to read as follows:

"69-4826. **Action by other parties.** A person, association, corporation, or agency of the state or federal government may apply to the *department* protesting *a* violation of this chapter. The department shall make *an* investigation and make a written report to the person, association, corporation, or agency which made the protest."

Section 70. Section 69-4903, R.C.M. 1947, is amended to read as follows:

"69-4903. **Functions, powers, and duties of the board of health and environmental sciences.** The board of health *and environmental sciences* shall:

(1) *Have* general supervision over all state waters which are directly or indirectly being used by a person for a public water supply or domestic purposes, or *as a* source of ice;

(2) *Adopt* rules *and* standards and issue orders to prevent pollution and protect the quality of water and for the collection and analysis of samples of water used for drinking or domestic purposes, giving legal notice of the adoption by publication or posting, and by filing a copy in the office of the clerk of the municipality or county where the rule or standard is effective."

Section 71. Section 69-4904, R.C.M. 1947, is amended to read as follows:

**"69-4904. Powers and duties of the department of health and environmental sciences.** The department of health and environmental sciences shall:

(1) *Upon* complaint to the department, or to the mayor or health officer of a municipality or to the managing board or officer of a public institution, make an investigation of alleged pollution of a water supply, and, if required, prohibit the continuance of the pollution by ordering removal of the cause of pollution;

(2) *Have* waters examined to determine their purity and the possibility that they may endanger public health;

(3) *Consult* and advise authorities of cities and towns, and persons having or about to construct systems for water supply, drainage, waste water, and sewage as to the most appropriate source of water supply and the best method of assuring its purity;

(4) *Advise* persons as to the best method of purifying and disposing of their drainage, sewage, or waste water with reference to the existing and future needs of other persons and to prevent pollution;

(5) *Consult* with persons engaged in or intending to engage in manufacturing or other business whose drainage, or sewage may tend to pollute waters as to the best method of preventing pollution;

(6) *Fix* fees for services rendered in analyzing water and inspections to cover costs of the service and deposit receipts in the general fund;

(7) *Establish* and maintain experiment stations and conduct experiments to study the best methods of purifying water, drainage, waste water, sewage, and industrial waste to prevent pollution, including investigation of methods used in other states;

(8) *Enter on* premises at reasonable times to determine sources of pollution or danger to water supplies and whether rules and standards of the board are being obeyed;

(9) *Notify* the attorney general of violations of laws on pollution of state waters."

Section 72. Section 69-4907, R.C.M. 1947, is amended to read as follows:

**"69-4907. Appeal from rule or standard — injunction to require compliance.** A person aggrieved by a rule or standard of the board may appeal to the district court. While the appeal is pending, the rule or standard of the board is in force. The *department* may request an injunction from the district court to require compliance with rules and standards."

Section 73. Section 69-5210, R.C.M. 1947, is amended to read as follows:

**"69-5210. Denial, suspension or revocation of license — procedure.** (1) A license may not be denied, suspended, or revoked *without notice and an opportunity for a hearing before the board.*

(2) *Notice shall be given* the applicant or licensee of a date, not less

than fifteen (15) days after mailing or service, for a hearing before the board;

(3) *The decision of the board is final thirty (30) days after it is mailed or served unless the applicant or licensee commences an action in the district court to appeal the decision. An appeal shall be in the district court where the facility is located or will be located.*"

Section 74. Section 69-5213, R.C.M. 1947, is amended to read as follows:

**"69-5213. Rules and standards for hospitals and hospital related facilities — adoption and publication by the department of health and environmental sciences.** (1) The department shall promulgate, adopt and publish rules and minimum standards for licensure of all hospitals and hospital related facilities.

(2) Rules relating to building, equipment and fire and life safety shall be covered by the state building code.

(3) The department shall extend a reasonable time for compliance with rules after adoption."

Section 75. Section 69-5220, R.C.M. 1947, is amended to read as follows:

**"69-5220. Injunction.** The department, on advice of the attorney general, may maintain an action for injunction or other process against any person to restrain or prevent the establishment, conduct, management, or operation of a facility which is endangering health and welfare."

Section 76. Section 69-5301, R.C.M. 1947, is amended to read as follows:

**"69-5301. Definitions.** *Unless the context requires otherwise, in this chapter:*

(1) "Federal acts" are federal statutes for the construction of medical or related facilities.

(2) "Hospital" includes public health centers and general, pulmonary disease, tuberculosis, mental, chronic disease, and other types of hospitals, and related facilities such as laboratories, out-patient departments, nurses' homes and training facilities, and central service facilities created in connection with hospitals, but does not include a hospital furnishing primarily domiciliary care.

(3) "Medical facility" means a diagnostic or diagnostic and treatment center, rehabilitation facility, facility for long-term care as defined by federal acts, and other medical facilities for which federal aid is or may be authorized.

(4) "Related facility" includes a facility devoted to the diagnosis, treatment, or care of individuals afflicted with mental illness or mental retardation.

(5) "Health center" means a publicly owned facility providing public

health services including publicly owned laboratories, clinics, and administrative offices operated in connection with the facility.

(6) "Nonprofit hospital or nonprofit medical facility" means a hospital or medical facility owned or operated by one (1) or more nonprofit corporations or associations if no part of the net earnings inure to the benefit of any private shareholder or individual."

Section 77. Section 69-5302, R.C.M. 1947, is amended to read as follows:

"69-5302. **Department as principal state agency for hospital construction — contracts with federal government.** The department of health and environmental sciences is the principal state agency for establishing and administering a state-wide plan for construction, modernization, alteration, equipment, maintenance, or operation of a hospital, medical, or related facility for provision of care, treatment, diagnosis, rehabilitation, training, or related service. *The* department may enter into contracts and agreements with agencies of the federal government to secure the benefit of federal programs to provide adequate medical and related facilities and services."

Section 78. Section 69-5303, R.C.M. 1947, is amended to read as follows:

"69-5303. **Powers and duties of department.** The department shall:

- (1) *Inventory* existing hospitals, medical, and related facilities;
- (2) *Survey* the need for construction or alteration of hospitals;
- (3) *Develop* and administer a state plan for the construction and alteration of public and other nonprofit hospitals, medical, and related facilities;
- (4) *If* desirable, enter into agreements for the utilization of facilities and services of other departments, agencies, and institutions, public or private;
- (5) *Accept* and deposit with the state treasurer and spend any grant, gift, or contribution made to meet costs of carrying out this act."

Section 79. Section 69-5305, R.C.M. 1947, is amended to read as follows:

"69-5305. **Submission of hospital construction plans to federal agencies — federal funds, use and disposition — inspection of projects — consultants' contracts.** *The* department shall:

- (1) *Prepare* and review a construction program in accordance with federal requirements that will provide adequate hospital, medical, and related facilities to people in the state providing, as far as possible, for distribution throughout the state to make all types of services reasonably acceptable to all persons;
- (2) *Submit* to federal agencies state plans including those for the hospital, medical, and related facilities construction program and modifications of it providing for the establishment and operation of hospital, medical, and related facilities construction activities in accordance with federal requirements;

(3) *Make* application to the appropriate federal agency for funds to assist in carrying out the survey and planning activities. Federal funds shall be deposited in the state treasury and used only for the purposes specified by law. Money which is not spent for those purposes shall be repaid to the federal government;

(4) *After* approval of a plan by the appropriate federal agency, publish a description in newspapers having general circulation throughout the state, and make the plan available upon request to all persons or organizations;

(5) *Inspect* construction or alteration projects approved by the appropriate federal agency and, if satisfactory, certify that work has been performed on the project or purchases made in accordance with approved plans and specifications, and that payment of federal funds is due to the applicant;

(6) *Require* reports, and make inspections and investigations, as necessary or required by the federal agency;

(7) *Contract* with consultants for services which are performed on a part-time or fee-for-service basis not involving administrative duties."

Section 80. Section 69-5307, R.C.M. 1947, is amended to read as follows:

"69-5307. **Minimum standards for maintenance and operation of hospitals, medical, and related facilities.** *The department shall prescribe minimum standards for the maintenance and operation of hospitals, medical, and related facilities receiving federal aid for construction under the state plan.*"

Section 81. Section 69-5606, R.C.M. 1947, is amended to read as follows:

"69-5606. **Denial of application for or revocation of license — request for hearing before the board, notice.** If the department denies an application for a license or revokes a license that has been issued, an applicant or licensee is entitled to a hearing before the board of *health and environmental sciences* to show cause why the action should not be taken. If a hearing is desired, the applicant or licensee shall notify the board in writing before the *tenth* day after notice of the denial or revocation is received."

Section 82. Section 69-5701, R.C.M. 1947, is amended to read as follows:

"69-5701. **Violations of public health laws or rules of board or department.** Anyone who violates a rule adopted by the board of *health and environmental sciences* or the department of *health and environmental sciences*, for which no penalty is specified, is guilty of a misdemeanor."

Section 83. Section 69-5804, R.C.M. 1947, is amended to read as follows:

"69-5804. **State radiation control agency.** (1) The *department* is the state radiation control agency.

(2) *Under the laws of this state, the department may employ, compensate, and prescribe the powers and duties of the individuals which are necessary to carry out this act.*

(3) The *department* may for the protection of the occupational and public health and safety:

(a) Develop and conduct programs for evaluation and control of hazards associated with the use of sources of ionizing radiation.

(b) Develop programs and adopt rules with due regard for compatibility with federal programs for licensing and regulation of by-product, source, radioactive waste materials, and special nuclear materials, and other radioactive materials. These rules shall cover equipment and facilities, methods for transporting, handling and storage of radioactive materials, permissible levels of exposure, technical qualifications of personnel, required notification of accidents and other incidents involving radioactive materials, survey methods and results, methods of disposal of radioactive materials, posting and labeling of areas, and sources, and methods, and effectiveness of controlling individuals in posted and restricted areas.

(c) *Adopt* rules relating to control of other sources of ionizing radiation. These rules shall cover equipment and facilities, permissible levels of exposure to personnel, posting of areas, surveys, and records.

(d) Advise, consult, and *cooperate* with other agencies of the state, the federal government, other states, interstate agencies, political subdivisions, and with groups concerned with control of sources of ionizing radiation.

(e) *Accept* and administer loans, grants, or other funds or gifts, conditional or otherwise, in furtherance of its functions, from the federal government and from other sources, public or private.

(f) Encourage, participate in, or conduct studies, investigations, training, research, and demonstrations, relating to control of sources of ionizing radiation.

(g) Collect and disseminate information relating to control of sources of ionizing radiation, including:

(i) Maintenance of a file of all license applications, issuances, denials, amendments, transfers, renewals, modifications, suspensions, and revocations;

(ii) Maintenance of a file of registrants possessing sources of ionizing radiation requiring registration under this act and any administrative or judicial action pertaining thereto;

(iii) Maintenance of a file of all rules relating to regulation of sources of ionizing radiation, pending or *adopted* and proceedings thereon."

Section 84. Section 69-5812, R.C.M. 1947, is amended to read as follows:

"69-5812. **Administration procedure and judicial review.** (1) In a proceeding under this act for granting, suspending, revoking, or amending

a license, or for determining compliance with, or granting exceptions from, rules *adopted under* this chapter, the board of health and *environmental sciences* shall first afford an opportunity for a hearing on the record upon the request of a person whose interest may be affected by the proceeding, and shall admit *the* person as a party to *the* proceeding.

(2) *When the department finds that an emergency exists requiring immediate action to protect the public health and safety, the department may, without notice or hearing, issue a rule or order reciting the existence of the emergency and requiring that such action be taken as considered necessary to meet the emergency. Notwithstanding any provision of this act to the contrary, the rule or order is effective immediately. A person to whom the rule or order is directed shall comply with it immediately, but on application to the board, shall be afforded a prompt hearing. On the basis of the hearing the emergency rule or order shall be continued, modified, or revoked by the board within thirty (30) days after the hearing or when the emergency no longer exists."*

Section 85. Section 69-5902, R.C.M. 1947, is amended to read as follows:

"69-5902. **Definitions.** *Unless the context requires otherwise, in this act:*

(1) "Board" means the board of water and waste water operators *provided for in section 82A-612.*

(2) "Operator" means the person in direct responsible charge of the operation of a water treatment plant, water distribution system, or waste water treatment plant. Operators of plants or systems serving less than ten (10) families are *exempt* from this chapter.

(3) "Department" means the *department of health and environmental sciences, provided for in Title 82A, chapter 6.*

(4) "Waste water treatment plant" means facilities designed to remove solids, bacteria, or other harmful constituents of sewage, industrial wastes, or other wastes and which discharges an effluent directly into *this state's* waters and which serves ten (10) or more families or serves an industry employing ten (10) or more persons.

(5) "Water supply system" means the system of pipes, structures, and facilities through which the water is obtained, treated, sold, distributed, or otherwise offered to the public for household use or use by humans and *serves* ten (10) or more families or *serves* an industry employing ten (10) or more persons.

(6) "Water treatment plant" means that portion of the water supply system which alters either the physical, chemical, or bacteriological quality of the water rendering it safe and palatable for human use.

(7) "Water distribution system" means that portion of the water supply system in which water is conveyed from the water treatment plant or other supply source to the premises of the consumer and which serves ten (10) or more families or supplies an industry employing ten (10) or more persons.

(8) "Certificate" means a certificate of competency issued by the *department* stating that the operator holding the certificate has met the requirements for the specified operator classification of the certification program.

(9) "Montana's waters" means all streams and lakes, including all rivers and lakes bordering on the state, wells, springs, irrigation systems, marshes, watercourses, waterways, drainage systems, and other bodies of water, surface and underground, natural or artificial, publicly or privately owned."

Section 86. Section 69-5903, R.C.M. 1947, is amended to read as follows:

**"69-5903. Board to assist department — meetings and organization — examination of candidates for certification.** (1) The board *shall* advise and assist the *department* in the administration of the certification program. The board shall serve as an advisory board to the *department* in actions relating to the qualifications of water and waste water treatment plant operators.

(2) *Annually* when new members are appointed to the board a chairman shall be elected at the next board meeting.

(3) The board shall hold at least one (1) examination each year for the purpose of examining candidates for certification at a time and place designated by the board. Those applicants whose competency is acceptable to the board shall be recommended to the *department* for certification. Additional meetings may be called by the chairman, or *on* written request of four (4) members of the board *when* necessary to carry out this *chapter*. Four (4) members constitute a quorum. The members of the board shall receive a fee of twenty dollars (\$20) per day while in session, plus the cost of actual and necessary expenses, including travel while discharging their official duties."

Section 87. Section 69-5906, R.C.M. 1947, is amended to read as follows:

**"69-5906. Operator of treatment plant or distribution system to be certified — certification of operators certified by other agency.** Water and waste water treatment plants and water distribution systems, whether publicly or privately owned, must be under the supervision of an operator whose competency is certified to by the *department* in a grade corresponding to the classification of that portion of the water or waste water supply system to be supervised. *However, this chapter does not* prevent a governmental agency, corporation, or individual from continuing to employ in *this* capacity a person in responsible charge of the operation of such works *on July 1, 1967*. Certificates of proper classification may be issued without examination to the person or persons certified by the governing board or owner to have been in responsible charge of the water and waste water plants and water distribution systems on the effective date of the act. A certificate so issued will be valid only in that plant. The board may consider for recommendation for certification the holder of a certificate issued by a governmental agency or equivalent certification board of another state, *on* presentation to the board of satisfactory



evidence that the applicant is in responsible charge of works located in *this state* requiring a certified operator and that he has successfully passed an examination at least equivalent to that required under section 69-5903(3) and section 69-5905."

Section 88. Section 69-5907, R.C.M. 1947, is amended to read as follows:

**"69-5907. Issuance of operators' certificates — display — annual renewal — revocation — termination of employment — reinstatement of certificate.** The *department* shall issue certificates attesting to the competency of operators. The certificates shall include the classification of the works which the operator is qualified to supervise. The certificate shall be prominently displayed in the office of the operator.

(1) Certificates continue in effect unless revoked by the *department*, but remain the property of the *department* and the certificate shall so state. A certificate shall be renewed annually by payment of *the* proper fee.

(2) The *department* may revoke the certificate of an operator following a hearing by the *department*, when it is found that the operator has practiced fraud or deception; that reasonable care, judgment, or the application of his knowledge or ability was not used in the performance of his duties; or that the operator is incompetent or unable to properly perform his duties. A person *who has* his certificate revoked by the *department* may appeal to the board for a rehearing within ten (10) days of notification by the *department*, after which time the revocation proceedings are no longer applicable and revocation of the certificate becomes final.

(3) Operators who terminate employment may retain their certificate for two (2) years, providing that all other requirements are met. After two (2) years, a certificate *is* automatically invalidated. Operators whose certificates are invalidated under this *chapter* may be issued new certificates of like classification provided appropriate proof of competency is presented to the board. Successful completion of an examination may be required at the discretion of the board."

Section 89. Section 69-5908, R.C.M. 1947, is amended to read as follows:

**"69-5908. Application for operator's certificate — payment of fee — use of proceeds.** A person desiring to engage in the operation of a water treatment plant, water distribution system, or waste water treatment plant shall first file an application with the *department* for a proper certificate. The *department* shall charge a fee, of the same amount as the license cost set forth in section 69-5909, for the filing of each application and shall not act on an application until *the* fee has been paid. *Filing* and certification fees shall be deposited with the state treasurer in the "*Board of Water and Waste Water Operators Account*" in the department earmarked revenue fund and shall be used to pay the expenses of the board and *department* under this *chapter*. Moneys may be invested in accordance with procedures of investment of state moneys. In granting the certificates, the *department* shall *give* due regard to the interest of *this state* in *protecting* the drinking water supplies and the quality of its water."

Section 90. Section 69-5909, R.C.M. 1947, is amended to read as follows:

**"69-5909. Term of operator's certificate — renewal fee — suspension and revocation — reinstatement.** *Certificates* issued under this chapter shall be *renewed annually before July 1*. After the payment of the initial fee *under section 69-5908*, a certificate holder shall pay before *July 1* of each certificate year a renewal fee *according to the following schedule*:

Class I — twenty dollars (\$20)

Class II — fifteen dollars (\$15)

Class III — ten dollars (\$10)

Class IV — five dollars (\$5)

Class V — three dollars (\$3)

A certificate issued after *July 1* expires the following *June 30*. If a certificate holder does not apply for a renewal of his certificate before *July 1* and remit to the *department* the necessary renewal fee, he shall have his certificate suspended by the board. If *the* certificate remains suspended for a period of more than thirty (30) days it shall be revoked by the board; however, the board, *before this* revocation, shall notify the certificate holder by certified mail *at the address on the issued certificate* of its intention to revoke, at least ten (10) days *before* the time set for action to be taken by the board on *the* certificate. A certificate once revoked may not be reinstated unless it *appears* that an injustice has occurred through error or omission or other fact or circumstances indicating to the board that the certificate holder was not guilty of negligence or laches. If a person whose certificate has been revoked through his own fault desires to continue as a water or waste water plant operator, he must make application to the *department under* section 69-5908. Successful completion of an examination may be required at the discretion of the board. Notice of suspension shall be given to certificate holder when *the* suspension occurs and to the proper official or owner of *the* treatment works or distribution system."

Section 91. Section 69-5910, R.C.M. 1947, is amended to read as follows:

**"69-5910. Rules of board.** The board shall *adopt* rules necessary to carry out this *chapter*. Before *the* rules *are effective*, they shall be approved by the *department*. The rules shall include, but are not limited to, provisions establishing the basis for classification of treatment plants *under* section 69-5904, provisions establishing qualifications of applicants, procedures for examination of candidates, and other provisions necessary for the administration of this act."

Section 92. Section 69-5911, R.C.M. 1947, is amended to read as follows:

**"69-5911. Unlawful to operate treatment plant or distribution system without certified operator.** *It is unlawful for a person, firm,*

or corporation both municipal and private, operating a waste water treatment plant, water treatment plant or water distribution system to operate *it* unless the competency of the operator is certified to by the *department* under this act. Furthermore, it *is* unlawful for *a* person to perform the duties of an operator without being certified under this act."

Section 93. Section 69-6010, R.C.M. 1947, is amended to read as follows:

"69-6010. **Powers and duties of board.** The board of *a* refuse disposal district established and organized under this act have the *following* powers and duties with the approval of the county commissioners of *the* counties involved:

(1) To develop and administer a program for the collection or disposal of refuse *in* the district.

(2) To employ *personnel*.

(3) To purchase, rent, or execute leasing agreements for such equipment and material necessary for carrying on an effective refuse collection or disposal program.

(4) To *cooperate* with any corporation, association, individual, or group of individuals, including any agency of the federal, state, or local government, in order to carry out effective programs.

(5) To receive gifts, grants, or donations for the purpose of advancing the program; to acquire by gift, deed, purchase, or condemnation land necessary for refuse disposal purposes.

(6) To enforce *department of health and environmental sciences* or local board of health rules pertaining to the storage, collection, and disposal of refuse.

(7) To apply for and receive from the federal government or the state government on behalf of *the* refuse disposal district moneys appropriated by federal or state legislative bodies for aiding *these* programs.

(8) To borrow from any loaning agency funds available for assistance in planning or financing a refuse disposal district and repay *these* with the moneys received from the fees levied *under* this act.

(9) The board *may* implement *its* proposed program a section at a time. *If* a program is implemented a section at a time, the fees may be levied only against that part of the district that is receiving the service. As the program is expanded throughout the district, that part of the district will start to pay the fee for service."

Section 94. Section 69-6203, R.C.M. 1947, is amended to read as follows:

"69-6203. **Duties of department — department authorized to accept gifts — enter into contracts — acquire and dispose of property.** (1) The *department of health and environmental sciences, hereafter referred to as department in this chapter*, shall:

(a) *Plan*, promote, and assist in the support of alcohol and drug dependence prevention, treatment, and control programs;

(b) *Conduct*, sponsor, and support research, investigations, and studies, including evaluation, of all phases of alcohol and drug dependence;

(c) *Assist* the development of educational and training programs relative to alcohol and drug dependence, and carry on programs to assist the public, and technical and professional groups, in becoming fully informed about alcohol and drug dependence;

(d) *Promote*, develop, and assist, financially and otherwise, alcohol and drug dependence programs administered by other state agencies, local government agencies, and private nonprofit organizations and agencies;

(e) *Encourage* and promote effective use of facilities, resources, and funds in the planning and conduct of programs and activities for prevention, treatment, and control of alcohol and drug dependence and, in this respect, *cooperate* with and utilize to the maximum possible extent the resources and services of federal, state, and local agencies.

(2) To carry out this act, the department may:

(a) *Accept* gifts, grants, and donations of money and property from public and private sources;

(b) *Enter* into contracts;

(c) *Acquire* and dispose of property."

Section 95. Section 82A-601, R.C.M. 1947, is amended to read as follows:

**"82A-601. Department of health and environmental sciences — head.** There is a department of health and environmental sciences. The department head is the director of health and environmental sciences *appointed by the governor in accordance with section 82A-106, and in addition shall have the qualifications required in section 82A-608.*"

Section 96. There is a new section to be numbered 82A-601.1, R.C.M. 1947, which reads as follows:

**82A-601.1. Functions of department.** The department and its units have responsibility for the administration of laws relating to public health, including, but not limited to, laws on:

- (1) Food services (Title 27, chapter 6);
- (2) Foods, drugs, and cosmetics (Title 27, chapter 7);
- (3) Flour and bread (Title 27, chapter 8);
- (4) Lodging establishments (Title 34, chapter 3);
- (5) Sanitarians (Title 69, chapter 34);
- (6) Ambulance services (Title 69, chapter 36);
- (7) Air pollution (Title 69, chapter 39);
- (8) Refuse disposal areas (Title 69, chapter 40);
- (9) Industrial hygiene (Title 69, chapter 42);
- (10) Tuberculosis control (Title 69, chapter 43);
- (11) Vital statistics (Title 69, chapter 44);
- (12) Local boards of health (Title 69, chapter 45);
- (13) Venereal disease control (Title 69, chapter 46);
- (14) Shoddy control (Title 69, chapter 47);
- (15) Water pollution (Title 69, chapter 48);
- (16) Public water supplies (Title 69, chapter 49);
- (17) Subdivisions (Title 69, chapter 50);
- (18) Cadavers (Title 69, chapter 51);
- (19) Hospitals and related facilities (Title 69, chapter 52);
- (20) Hospital survey and construction (Title 69, chapter 53);

- (21) Cesspools, septic tanks, and privies, etc. (Title 69, chapter 54);
- (22) Public swimming pools and bathing places (Title 69, chapter 55);
- (23) Tourist campgrounds (Title 69, chapter 56);
- (24) Control of ionizing radiation (Title 69, chapter 58);
- (25) Water treatment plants and distribution systems (Title 69, chapter 59);
- (26) Refuse disposal districts (Title 69, chapter 60);
- (27) Alcohol and drug dependence (Title 69, chapter 62).

Section 97. Section 82A-604, R.C.M. 1947, is amended to read as follows:

**"82A-604. Division of environmental sciences — creation.** There is a division of environmental sciences within the department. The *department* shall assign all functions performed by the department relating to air pollution control, water pollution control, radiation control, pesticides control, environmental sanitation, solid waste disposal, industrial hygiene, and related areas to the division."

Section 98. Section 82A-606, R.C.M. 1947, is amended to read as follows:

**"82A-606. Air pollution control advisory council — appointment — qualifications — term.** (1) *There is an air pollution control advisory council.*

(2) *The council consists of ten(10) members appointed by the governor, with the consent of the senate, as follows: a representative of labor; a representative of agriculture; a representative of the manufacturing industry; a representative of the fuel industry; a practicing physician licensed in this state; a practicing veterinarian licensed in this state; a practicing registered professional chemical or environmental engineer; a meteorologist; a conservationist; and an urban planning consultant.*

(3) *The appointed members shall serve at the pleasure of the governor.*

(4) Subsections (5) through (8) of section 82A-110 apply to the council and members."

Section 99. Section 82A-607, R.C.M. 1947, is amended to read as follows:

**"82A-607. Water pollution control advisory council — appointment — qualifications — term.** (1) *There is a water pollution control advisory council.*

(2) *The council consists of eleven (11) members. The members are:*

(a) *The director of fish and game;*

(b) *The administrator of the water resources division of the department of natural resources and conservation;*

(c) *The director of agriculture;*

(d) *Eight (8) members appointed by the governor as follows: a representative of industry concerned with the disposal of inorganic waste; a representative of industry concerned with the disposal of organic waste; a livestock feeder; a representative of municipal government; a representative of an organization concerned with fishing for sport; a representative*

*from labor; a supervisor of a soil and water conservation district; a representative of an organization concerned with water recreation.*

(3) *The appointed council members serve at the pleasure of the governor.*

(4) Subsections (5) through (8) of section 82A-110 apply to the council and members."

Section 100. Section 82A-608, R.C.M. 1947, is amended to read as follows:

**"82A-608. Director of health and environmental sciences — qualifications.** (1) *The director of health and environmental sciences shall:*

(1) *Have a degree of doctor of medicine.*

(2) *Have successfully completed at least one (1) year of graduate study in an approved school of public health.*

(3) *Have had at least two (2) years' experience as a full-time public health officer.*

(4) *Be eligible for a license by the board of medical doctors.*

(5) *Receive a license from the board of medical doctors not later than six (6) months after his appointment."*

Section 101. There is a new section to be numbered 82A-612, R.C.M. 1947, which reads as follows:

**82A-612. Board of water and waste water operators — appointment — qualifications — term.** (1) *There is a board of water and waste water operators.*

(2) *The board consists of seven (7) members. Except as provided in subsection (2)(e) of this section, the members shall be appointed by the governor. The members are:*

(a) *Two (2) members who are employed water supply system or water treatment plant operators holding valid certificates. One (1) of these members shall hold a certificate by examination of the highest class issued by the department of health and environmental sciences. There is no restriction on the classification of the certificate held by the other operator;*

(b) *Two (2) members who are employed waste water treatment plant operators holding valid certificates. One (1) of these members shall hold a certificate by examination of the highest class issued by the department of health and environmental sciences. There is no restriction on the classification of the certificate held by the other operator;*

(c) *One (1) member serving on the faculty of a university or college whose major field is related to water supply systems, waste water treatment, chemical or civil engineering, chemistry, or bacteriology;*

(d) *One (1) member who is a representative of a municipality required to employ a certified operator and who holds a position of either city*

manager, city engineer, director of public works, works manager, or their equivalent;

(e) The administrator of the division of environmental sciences of the department of health and environmental sciences or a qualified member of his staff appointed by the administrator.

(3) Members, except the ex officio voting member from the department of health and environmental sciences, shall serve for a term of six (6) years.

(4) The board is allocated to the department for administrative purposes only as prescribed in section 82A-108.

Section 102. Section 83-108, R.C.M. 1947, is amended to read as follows:

**"83-108. Jurisdiction over lands purchased by United States.** Pursuant to article 1, section 8, paragraph 17 of the constitution of the United States, consent to purchase is hereby given, and exclusive jurisdiction ceded, to the United States over and with respect to any lands within the limits of this state, which shall be acquired by the complete purchase by the United States, for any of the purposes described in said paragraph of the constitution of the United States, said jurisdiction to continue as long as said lands are held and occupied by the United States for said purposes; reserving, however, to this state the right to serve and execute civil or criminal process lawfully issued by the courts of the state, within the limits of the territory over which jurisdiction is ceded in any suits or transactions for or on account of any rights obtained, obligations incurred, or crimes committed in this state, within or without such territory; and reserving further to the said state the right to tax persons and corporations, their franchises and property within said territory; and reserving further to the state and its inhabitants and citizens the right to fish and hunt, and the right of access, ingress and egress to and through said ceded territory to all persons owning or controlling livestock for the purpose of watering the same, and saving further to the state of Montana jurisdiction in the enforcement of state laws relating to the duties of the *department of livestock* and the *department of health and environmental sciences*, and the enforcement of any regulations promulgated by said *departments* in accordance with the laws of the state of Montana; provided, however, that jurisdiction shall not vest until the United States, through the proper officers, shall file an accurate map or plat and description by metes and bounds of said lands in the office of the county clerk and recorder of the county in which said lands are situated, and if such lands shall be within the corporate limits of any city, such map or plat shall also be filed in the office of the city clerk of said city, and the filing of such map as herein provided, shall constitute acceptance of the jurisdiction by the United States as herein ceded. The offer by the state of Montana to cede to the federal government legislative jurisdiction over areas within the state of Montana as contained in the act of the second legislative assembly of the state of Montana, 1891, entitled: "An act giving the consent of the state of Montana to the purchase, by the United States, of land in any city or town of the state, for the purpose of United States courthouse, post office and for other purposes" approved March 5, 1891,

as amended by the act of the third legislative assembly of 1893, an act entitled: "An act giving the consent of the state of Montana to the purchase by the United States of land in any city or town of the state for the purpose of United States courthouse, post offices and for other like purposes," approved March 9, 1893, is hereby withdrawn except as to areas heretofore completely purchased or acquired by the federal government and over which areas the federal government has heretofore assumed either exclusive legislative jurisdiction or concurrent legislative jurisdiction under the terms of one or the other of said acts."

Section 103. Section 83-109, R.C.M. 1947, is amended to read as follows:

**"83-109. Concurrent jurisdiction over Fort Peck dam ceded to United States — reservation of rights to state.** That consent to purchase or condemn all necessary lands is hereby given and concurrent jurisdiction shall be, and the same is hereby, ceded to the United States over the Fort Peck dam, the body of water or artificial lake created by such dam, the land under such body of water, and any lands now owned or which may be hereafter acquired by the United States and which shall touch such body of water, all such being situated in the counties of Valley, Phillips, McCone, Garfield, Petroleum and Fergus, state of Montana, saving, however, to the said state the right to serve civil or criminal process within the limits of the territory over which jurisdiction is so ceded in any suits or prosecutions for or on account of rights obtained, obligations incurred, or crimes committed in said state, within or without said territory, and saving further to the said state the right to tax persons and corporations, their franchises and property within said territory, and reserving further to the said state and its inhabitants, citizens, and non-residents the right to fish or hunt by boat or otherwise, and the right of access, ingress and egress to and through said ceded territory to all persons owning or controlling livestock for the purpose of watering the same, and saving further to the state jurisdiction in the enforcement of the state laws relating to the duties of the *department of* livestock, and the *department of health and environmental sciences*, and the enforcement of regulations promulgated by said *departments* in accordance with the laws of said state; provided, however, that jurisdiction shall not vest until the United States, through the proper officers, notifies the governor of the state of Montana that they assume police or military jurisdiction over said territory."

Section 104. There is a new section to be numbered 82A-613, R.C.M. 1947, which reads as follows:

**82A-613. Name changes.** Wherever the words "state board of health," "board," "board of health," or "Montana state board of health" appear in sections 48-135, 48-140, 69-4303, 69-4402, 69-4702, 69-5503, 69-5602, 69-5803, and 95-802, the words "department of health and environmental sciences" are substituted therefor.

Section 105. There is a new section to be numbered 82A-614, R.C.M. 1947, which reads as follows:

**82A-614. Name changes.** Wherever the words "state department of



health," or "bureau of vital statistics, state board of health" appear in sections 69-5102, 69-5203, 69-5401, and 93-101-4, the words "department of health and environmental sciences" are substituted therefor.

Section 106. There is a new section to be numbered 82A-615, R.C.M. 1947, which reads as follows:

**82A-615. Name changes.** Wherever the words "state board of health" appear in sections 11-2412, 15-2304, and 16-1037, the words "department of health and environmental sciences" are substituted therefor.

Section 107. There is a new section to be numbered 82A-616, R.C.M. 1947, which reads as follows:

**82A-616. Name changes.** Wherever the words "state board," "board," or "state board of health" or "board of health" appear in sections 27-613, 27-615, 27-620, 27-621, 27-625, 27-709, 27-711, 27-713, 27-715, 27-716, 27-717, 27-719, 27-720, 27-802, 27-805, 34-307, 69-3403, 69-3404, 69-3609, 69-4306, 69-4403, 69-4407, 69-4410, 69-4411, 69-4412, 69-4413, 69-4414, 69-4416, 69-4425, 69-4431, 69-4616, 69-4617, 69-4703, 69-4704, 69-4705, 69-4706, 69-5205, 69-5207, 69-5208, 69-5212, 69-5217, 69-5219, 69-5304, 69-5306, 69-5308, 69-5310, 69-5311, 69-5401, 69-5402, 69-5406, 69-5407, 69-5505, 69-5510, 69-5511, 69-5603, 69-5806, 69-5807, 69-5808, 69-5809, 69-5810, 69-5813, 69-5814, and 69-5816, the word "department" is substituted therefor.

Section 108. There is a new section to be numbered 82A-617, R.C.M. 1947, which reads as follows:

**82A-617. Name changes.** Wherever the words "state board" appear in sections 69-4118, 69-4509, 69-4511, and 69-4519, the word "department" is substituted therefor.

Section 109. There is a new section to be numbered 82A-618, R.C.M. 1947, which reads as follows:

**82A-618. Name changes.** Wherever the words "department of health," or "state department of health" appear in sections 69-4004, 69-4005, 69-4007, 69-4009, 69-4110.1, 69-4403, 69-4610, 69-4705, 69-5402, 69-5403, 69-5504, 69-5506, 69-5507, 69-5508, and 69-5603, the word "department" is substituted therefor.

Section 110. There is a new section to be numbered 82A-619, R.C.M. 1947, which reads as follows:

**82A-619. Name changes.** Wherever the words "state registrar" appear in sections 69-4406, 69-4410, 69-4411, 69-4417, 69-4418, 69-4423, 69-4431, 69-4432, 69-4433, 69-4434, and 69-4435, the word "department" is substituted therefor.

Section 111. There is a new section to be numbered 82A-620, R.C.M. 1947, which reads as follows:

**82A-620. Name changes.** Wherever the words "executive officer," or "director" appear in sections 27-615, 69-4509, 69-5311, 69-5904, and 69-5905, the word "department" is substituted therefor.

Section 112. The publishers of the Revised Codes of Montana, 1947, are directed, under the supervision of the supreme court of Montana, to make the substitutions enumerated in sections 104, 105, 106, 107, 108, 109, 110 and 111 of this act, when reprinting sections or portions of sections of the Revised Codes in either supplements to or replacement volumes for the Revised Codes.

Section 113. Sections 27-618, 69-3408, 69-3409, 69-4101, 69-4103, 69-4105, 69-4107 through 69-4109, 69-4113, 69-4210, 69-4810, 69-4811, 69-4813, 69-5211, 69-5214, 69-5215, 69-5216, 69-5805, 69-6202, 82A-602, 82A-603, and 82A-609 are repealed.

Section 114. This act is effective on passage and approval.

Approved March 28, 1974

## CHAPTER NO. 350

### AN ACT FOR THE CODIFICATION AND GENERAL REVISION OF THE LAWS RELATING TO THE DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 54-301, R.C.M. 1947, is amended to read as follows:

"54-301. **Definitions.** As used in this act:

(1) "Administer" means the direct application of a dangerous drug, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

- (a) a practitioner (or by his authorized agent), or
- (b) the patient or research subject at the direction and in the presence of the practitioner.

(2) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. It does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman.

(3) "Board" means the board of pharmacists, provided for in section 82A-1602.21.

(4) "Bureau" means the bureau of narcotics and dangerous drugs, United States department of justice, or its successor agency.

(5) "Dangerous drug" means a drug, substance or immediate precursor in schedules I through V hereinafter set forth.

(6) "Counterfeit substance" means a dangerous drug which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number of device,

or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the drug.

(7) "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a dangerous drug, whether or not there is an agency relationship.

(8) "*Department*" means the department of professional and occupational licensing, provided for in Title 82A, chapter 16.

(9) "Dispense" means to deliver a dangerous drug to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the drug for that delivery.

(10) "Dispenser" means a practitioner who dispenses.

(11) "Distribute" means to deliver other than by administering or dispensing a dangerous drug.

(12) "Distributor" means a person who distributes.

(13) "Drug" means:

(a) substances recognized as drugs in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or any supplement to any of them;

(b) substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals;

(c) substances (other than food) intended to affect the structure or any function of the body of man or animals; and

(d) substances intended for use as a component of any article specified in clause (a), (b), or (c) of this subsection. It does not include devices or their components, parts or accessories.

(14) "Immediate precursor" means a substance which the board of pharmacists has found to be and by rule designates as being the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a dangerous drug, the control of which is necessary to prevent, curtail, or limit manufacture.

(15) "Manufacture" means the production, preparation, propagation, compounding, conversion or processing of a dangerous drug, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the drug or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a dangerous drug by an individual for his own use or the preparation, compounding, packaging, or labeling of a dangerous drug:

(a) by a practitioner as an incident to his administering or dispensing of a dangerous drug in the course of his professional practice, or

(b) by a practitioner, or by his authorized agent under his supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.

(16) "Marihuana" means all parts of the plant *cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

(17) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(a) opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate;

(b) any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the drugs referred to in clause (a), but not including the isoquinoline alkaloids, of opium;

(c) opium poppy and poppy straw;

(d) coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of these drugs, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

(18) "Opiate" means any drug having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as a dangerous drug under section 54-302 of this act, the dextrorotatory isomer of 3-methoxyn-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

(19) "Opium poppy" means the plant of the species *papaver somniferum* L., except its seeds.

(20) "Person" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

(21) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

(22) "Practitioner" means:

(a) a physician, dentist, veterinarian, scientific investigator, or other person licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a dangerous drug in the course of professional practice or research in this state;

(b) a pharmacy or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a dangerous drug in the course of professional practice or research in this state.

(23) "Production" includes the manufacture, planting, cultivation, growing, or harvesting of a substance or drug regulated under the provisions of this act.

(24) "State," when applied to a part of the United States, includes any state, district, commonwealth, territory, insular possession thereof, and any area subject to the legal authority of the United States of America.

(25) "Ultimate user" means a person who lawfully possesses a dangerous drug for his own use or for the use of a member of his household or for administering to an animal owned by him or by a member of his household.

(26) The term "prescription" shall be given the meaning it has in section 66-1502 (13), R.C.M. 1947."

Section 2. Section 54-302, R.C.M. 1947, is amended to read as follows:

**"54-302. Administration of act — scheduling and rescheduling of drugs — findings — deviations from federal schedules — substances excluded.** (1) The board of pharmacists shall administer this act and may add drugs to or delete or reschedule all drugs enumerated in the schedules in sections 54-305, 54-307, 54-309, 54-311, or 54-313, pursuant to the rule-making procedures of the Montana Administrative Procedure Act (82-4201 through 82-4225). In making a determination regarding a drug, the board shall consider the following:

- (a) the actual or relative potential for abuse;
- (b) the scientific evidence of its pharmacological effect, if known;
- (c) the state of current scientific knowledge regarding the drug;
- (d) the history and current pattern of abuse;
- (e) the scope, duration, and significance of abuse;
- (f) the risk to the public health;
- (g) the potential of the drug to produce psychic or physiological dependence liability; and
- (h) whether the drug is an immediate precursor of a drug already controlled under this act.

(2) After considering the factors enumerated in subsection (1) the board shall make findings with respect thereto and if it finds the drug has a potential for abuse it shall designate such drug a dangerous drug in the manner set forth in the Montana Administrative Procedure Act.

(3) If the board designates a drug as an immediate precursor, drugs which are precursors of the controlled precursor shall not be subject to control solely because they are precursors of the controlled precursor.

(4) If any drug is designated, rescheduled, or deleted as a "controlled substance" under federal law and notice thereof is given to the board, the board shall similarly control the drug under this act after the expiration of thirty (30) days from publication in the federal register of a final order designating a drug as a "controlled substance" or rescheduling or deleting a drug, unless within that thirty (30) day period, the board objects to inclusion, rescheduling, or deletion. In that case, the board shall *cause* the reasons for objection *to be published* and afford all interested parties an opportunity to be heard. At the conclusion of the hearing, the *department* shall publish *the board's* decision, which shall be final unless altered thereafter by the board or by statute. Upon publication of objection to inclusion, rescheduling, or deletion under this act by the board, control under this act is stayed until the *board's* decision *is published*.

(5) Authority to control under this section does not extend to distilled spirits, liquor, wine, malt beverages, beer, porter, ale, stout or tobacco.

(6) The board shall exclude any non-narcotic drug from a schedule if such drug may, under the Federal Food, Drug, and Cosmetic Act and section 27-716 (a) (2) of the Montana Food, Drug, and Cosmetic Act, be lawfully sold over the counter without a prescription."

Section 3. Section 54-303, R.C.M. 1947, is amended to read as follows:

"54-303. **Use of names of drugs in schedules.** The dangerous drugs listed or to be listed in the schedules in sections 54-305, 54-307, 54-309, 54-311 and 54-313 are included by whatever official, common, usual, chemical, or trade name designated."

Section 4. Section 54-314, R.C.M. 1947, is amended to read as follows:

"54-314. **Annual republication of schedules.** The board shall revise and *the department* shall republish the schedules of dangerous drugs annually."

Section 5. Section 54-315, R.C.M. 1947, is amended to read as follows:

"54-315. **Rule to be promulgated by board — fees.** The board shall promulgate rules for its administration which are not inconsistent with this act and specifically shall levy and *the department shall* collect reasonable registration fees relating to the registration and control of the manufacture, distribution, and dispensing of dangerous drugs within the state; provided, however, the maximum fee for any registration shall not exceed one hundred dollars (\$100) per year."

Section 6. Section 54-316, R.C.M. 1947, is amended to read as follows:

"54-316. **Annual registration required for manufacturer, distributor or dispenser — exceptions — inspection.** (1) Every person who manufactures, distributes, or dispenses any dangerous drug within this state must, on and after January 1, 1974, obtain annually a registration issued by the *department* in accordance with *board* rules.

(2) Persons registered by the board under this act to manufacture, distribute, dispense, or conduct research with dangerous drugs may possess, manufacture, distribute, dispense, or conduct research with those

drugs to the extent authorized by their registration and in conformity with the other provisions of this act.

(3) The following persons need not register and may lawfully possess dangerous drugs under this act:

(a) an agent or employee of any registered manufacturer, distributor, or dispenser of any dangerous drug if he is acting in the usual course of his business or employment;

(b) a common or contract carrier or warehouseman, or an employee thereof, whose possession of any dangerous drug is in the usual course of business or employment;

(c) an ultimate user or a person in possession of any dangerous drug pursuant to a lawful order of a practitioner or in lawful possession of a Schedule V drug;

(d) officers and employees of the state or a political subdivision of the state, while acting in the course of their official duties.

(4) The board may waive by rule the requirement for registration of certain manufacturers, distributors, or dispensers if it finds it consistent with the public health and safety.

(5) A separate registration is required at each principal place of business or professional practice where the applicant manufactures, distributes, or dispenses dangerous drugs.

(6) The board may *have* the establishment of a registrant or applicant for registration *inspected*."

Section 7. Section 54-317, R.C.M. 1947, is amended to read as follows:

**"54-317. Manufacturers and distributors registered unless against public interest — factors considered — practitioners' authority — research with Schedule I drugs — federal registration.**

(1) The board shall register an applicant to manufacture or distribute dangerous drugs included in sections 54-305, 54-307, 54-309, 54-311 and 54-313 unless it determines that the issuance of that registration would be inconsistent with the public interest. In determining the public interest, the board shall consider the following factors:

(a) maintenance of effective controls against diversion of dangerous drugs into other than legitimate medical, scientific, or industrial channels;

(b) compliance with applicable state and local law;

(c) any convictions of the applicant under any federal and state laws relating to any dangerous drug;

(d) past experience in the manufacture or distribution of dangerous drugs, and the existence in the applicant's establishment of effective controls against diversion;

(e) furnishing by the applicant of false or fraudulent material in any application filed under this act;

(f) suspension or revocation of the applicant's federal registration to manufacture, distribute, or dispense dangerous drugs as authorized by federal law; and

(g) any other factors relevant to and consistent with the public health and safety.

(2) Registration under subsection (1) does not entitle a registrant to manufacture and distribute dangerous drugs in Schedule I or II other than those specified in the registration.

(3) Practitioners shall be registered to dispense any dangerous drugs or to conduct research with dangerous drugs in Schedules II through V if they are authorized to dispense or conduct research under the laws of this state. The board need not require separate registration for practitioners engaging in research with non-narcotic dangerous drugs in Schedules II through V where the registrant is already registered under this act in another capacity. Practitioners registered under federal law to conduct research with Schedule I drugs may conduct research with Schedule I drugs within this state upon furnishing the board evidence of that federal registration.

(4) Compliance by manufacturers and distributors with the provisions of the federal law respecting registration (excluding fees) entitles them to be registered under this act."

Section 8. Section 54-318, R.C.M. 1947, is amended to read as follows:

"54-318. **Suspension or revocation of registration — grounds.** (1) A registration under section 54-316 to manufacture, distribute, or dispense a dangerous drug may be suspended or revoked by the board upon a finding that the registrant:

(a) has furnished false or fraudulent material information in any application filed under this act;

(b) has been convicted of a felony under any state or federal law relating to any dangerous drug or controlled substance; or

(c) has had his federal registration suspended or revoked to manufacture, distribute, or dispense controlled substances.

(2) The board may limit revocation or suspension of a registration to the particular dangerous drug with respect to which grounds for revocation or suspension exist.

(3) If the board suspends or revokes a registration, all dangerous drugs owned or possessed by the registrant at the time of suspension or the effective date of the revocation order may be placed under seal. No disposition may be made of drugs under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon application therefor, orders the sale of perishable drugs and the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all dangerous drugs may be forfeited to the state.

(4) The board shall promptly *cause* the bureau *to be notified* of all orders suspending or revoking registration and all forfeitures of dangerous drugs."

Section 9. Section 54-319, R.C.M. 1947, is amended to read as follows:



**"54-319. Procedure for denial, suspension, revocation or refusal to renew registration.** (1) Before denying, suspending or revoking a registration, or refusing a renewal of registration, the board shall *cause to be served* upon the applicant or registrant an order to show cause why registration should not be denied, revoked, or suspended, or why the renewal should not be refused. The order to show cause shall contain a statement of the basis therefor and shall require the applicant or registrant to appear before the board at a time and place not less than thirty (30) days after the date of service of the order, but in the case of a denial or renewal of registration the show cause order shall be served not later than thirty (30) days before the expiration of the registration. These proceedings shall be conducted without regard to any criminal prosecution or other proceeding. Proceedings to refuse renewal of registration shall not abate the existing registration which shall remain in effect pending the outcome of the administrative hearing.

(2) The board may suspend, without an order to show cause, any registration simultaneously with the institution of proceedings under section 54-317 or where renewal of registration is refused, if it finds that there is an imminent danger to the public health or safety which warrants such action. The suspension shall continue in effect until the conclusion of the proceedings, including judicial review thereof, unless sooner withdrawn by the board or dissolved by a court of competent jurisdiction."

Section 10. Section 54-322, R.C.M. 1947, is amended to read as follows:

**"54-322. Prescription and medical requirements for scheduled drugs.** (1) No dangerous drug in Schedule II may be dispensed without the written prescription of a practitioner.

(2) In emergency situations, as defined by rule of the board, Schedule II drugs may be dispensed upon oral prescription of a practitioner, reduced promptly to writing and filed by the pharmacy. Prescriptions shall be retained in conformity with the requirements of section 54-319. No prescription for a Schedule II drug may be refilled.

(3) A dangerous drug included in Schedule III or IV, which is a prescription drug as determined under the federal or Montana food, drug and cosmetic acts shall not be dispensed without a written or oral prescription of a practitioner. The prescription shall not be filled or refilled more than six (6) months after the date thereof or be refilled more than five (5) times, unless renewed by the practitioner.

(4) A dangerous drug included in Schedule V shall not be distributed or dispensed other than for a medical purpose."

Section 11. Section 54-323, R.C.M. 1947, is amended to read as follows:

**"54-323. Educational programs — research — information confidential — possession of drugs by researchers.** (1) The board shall carry out educational programs designed to prevent and deter misuse and abuse of dangerous drugs. In connection with these programs it may:

(a) promote better recognition of the problems of misuse and abuse

of dangerous drugs within the regulated industry and among interested groups and organizations;

(b) assist the regulated industry and interested groups and organizations in contributing to the reduction of misuse and abuse of dangerous drugs;

(c) consult with interested groups and organizations to aid them in solving administrative and organizational problems;

(d) evaluate procedures, projects, techniques, and controls conducted or proposed as part of educational programs on misuse and abuse of dangerous drugs;

(e) disseminate the results of research on misuse and abuse of dangerous drugs to promote a better public understanding of what problems exist and what can be done to combat them; and

(f) assist in the education and training of state and local law enforcement officials in their efforts to control misuse and abuse of dangerous drugs.

(2) The board shall encourage research on misuse and abuse of dangerous drugs. In connection with the research, and in furtherance of the enforcement of this act, it may:

(a) establish methods to assess accurately the effects of dangerous drugs and identify and characterize those with potential for abuse;

(b) make studies and undertake programs of research to:

(i) develop new or improved approaches, techniques, systems, equipment and devices to strengthen the enforcement of this act;

(ii) determine patterns of misuse and abuse of dangerous drugs and the social effects thereof; and

(iii) improve methods for preventing, predicting, understanding and dealing with the misuse and abuse of dangerous drugs; and

(c) *request the department to enter into contracts with public agencies, institutions of higher education, and private organizations or individuals for the purpose of conducting research, demonstrations, or special projects which bear directly on misuse and abuse of dangerous drugs.*

(3) The board may authorize persons engaged in research on the use and effects of dangerous drugs to withhold the names and other identifying characteristics of individuals who are the subjects of the research. Persons who obtain this authorization are not compelled in any civil, criminal, administrative, legislative, or other proceeding to identify the individuals who are the subjects of research for which the authorization was obtained.

(4) The board may authorize the possession and distribution of dangerous drugs by persons engaged in research. Persons who obtain this authorization are exempt from state prosecution for possession and distribution of dangerous drugs to the extent of the authorization."

Section 12. Section 62-501, R.C.M. 1947, is renumbered 82A-1602.13, and is amended to read as follows:

**"82A-1602.13. Board of horse racing created — appointment — removal.** (1) There is a board of horse racing.

(2) *The board consists of five (5) members, appointed by the governor with the consent of the senate, who shall be citizens, residents and qualified electors of this state. At least one (1) member shall be a breeder of racing horses; one (1) member shall be a member of an independent horse-racing association; one (1) member shall be a member of a county fair board that conducts a fair featuring parimutuel betting; and two (2) members shall have occupations unrelated to horseracing.*

(3) *The governor shall not appoint any member who resides in the same county as a current member. The governor shall appoint members on the basis of experience, qualifications, and a reasonable geographical balance throughout the state.*

(4) *Each member shall serve for a term of three (3) years. A member may be removed from office by the governor only for cause."*

Section 13. Section 62-502, R.C.M. 1947, is amended to read as follows:

**"62-502. Definitions.** *Unless the context requires otherwise, in this chapter:*

(1) *"Board" means the board of horse racing, provided for in section 82A-1602.13.*

(2) *"Department" means the department of professional and occupational licensing, provided for in Title 82A, chapter 16.*

(3) *"Persons" means individuals, firms, corporations, and associations.*

(4) *"Race meet" means an exhibition of thoroughbred, purebred, or registered horse racing where the parimutuel system of wagering is used."*

Section 14. Section 62-503, R.C.M. 1947, is amended to read as follows:

**"62-503. Chairman — quorum — costs.** (1) *The board shall organize by electing one (1) of its members chairman. Three (3) members of the board shall constitute a quorum for the transaction of business by the board.*

(2) *The board may incur costs, charges, and expenses reasonably necessary to carry out this act.*

(3) *Each member may be paid twenty-five dollars (\$25) for each day in which he is actually and necessarily engaged in the performance of board duties, and shall also be reimbursed for actual and necessary expenses incurred in his official service."*

Section 15. Section 62-504, R.C.M. 1947, is amended to read as follows:

"62-504. **Department's report — public record.** (1) *The department shall keep detailed records of board meetings and of the business transacted at the meetings, and licenses applied for and issued.*

(2) *Records of the board kept by the department are public records, subject to public inspection."*

Section 16. Section 62-505, R.C.M. 1947, is amended to read as follows:

"62-505. **Duties of board, department, and licensees — license fee.** *The board shall adopt rules to govern race meets and the parimutuel system. These rules shall include the following: definitions, auditing, and supervision of the parimutuel system, corrupt practices, supervision, duties and responsibilities of the presiding steward, racing secretary and other racing officials, licensing of all personnel who have anything to do with the substantive operation of racing, the establishment of dates for race meets and meetings in the best interests of breeding and racing in this state, and the veterinary practices and standards which must be observed in connection with race meets. A person who participates in a race meet shall be licensed and charged an annual fee not to exceed ten dollars (\$10), which shall be paid to the department and used for expenses of the board, subject to section 82A-1603(6). Each person holding a license under this chapter, and every owner, trainer, jockey, and attendant at a race course in this state, shall comply with this chapter and with the rules adopted and orders issued by the board."*

Section 17. Section 62-506, R.C.M. 1947, is amended to read as follows:

"62-506. **Authority of board.** *The board shall, subject to sections 82A-1603 and 82A-1604, license, regulate, and supervise race meets held in this state under this chapter, and shall have the places where race meets are held visited and inspected at least once a year."*

Section 18. Section 62-507, R.C.M. 1947, is amended to read as follows:

"62-507. **License — application therefor — type and number of races — fee per day — refund — cancellation — hearing.** (1) *It is unlawful for a person to hold a race meet in this state without a valid license issued by the department under this chapter. A person applying for a license to hold a race meet, under this chapter, shall file an application with the department which shall set forth the time, place, and number of days the license will continue, and other information the board requires.*

(2) *A person who has been convicted of a crime involving moral turpitude may not be issued a license of any kind, nor may a license be issued to a person who has violated this chapter or the rules of the board, or who has failed to pay the fees, taxes, or moneys required under this chapter.*

(3) *Applications to hold race meets shall be submitted to the department, and the board shall act on the applications within thirty (30) days. The board is the sole judge of whether the race meet may be licensed and the number of days the meet may continue.*

(4) *The board shall require that a fairboard conducting race meets in conjunction with its regularly scheduled fair shall meet the requirements of the rules adopted by the board before granting a license. An unexpired license held by a person who violates this chapter, or who fails to pay to the department the sums required under this chapter, is subject to cancellation and revocation by the board.*"

Section 19. Section 62-508, R.C.M. 1947, is amended to read as follows:

"62-508. **Penalty for violations of law — power of board.** (1) A person holding a race meet, and an owner, trainer, or jockey participating in a race meet, without first being licensed *under this chapter*, and a person willfully violating this *chapter* is guilty of a misdemeanor.

(2) *The board may exclude from race courses in this state a person who the board considers detrimental to the best interest of racing, or a person who willfully violates this chapter or a rule or order of the board.*

(3) *It is lawful to conduct race meets at a race track or otherwise, at any time during the week."*

Section 20. Section 62-509, R.C.M. 1947, is amended to read as follows:

"62-509. **Race exclusively for Montana bred horses — bonus for winner.** (1) For the purpose of encouraging the breeding, *in this state*, of valuable thoroughbred, purebred, quarter horse, appaloosa, or registered horses, at least one (1) race each day at each race meet shall be limited to horses *bred in this state*. If, in the opinion of the *board* sufficient competition cannot be had among *this* class of horses, the race may be eliminated for *the* day and a substitute race provided instead.

(2) A sum equal to ten per cent (10%) of the first money of every purse won by a horse *bred in this state* shall be paid by the licensee conducting the race meet to the breeder of *the* horse."

Section 21. Section 62-510, R.C.M. 1947, is amended to read as follows:

"62-510. **Public liability insurance.** For the protection of the public, exhibitors, and visitors, a person licensed to conduct a race meet under this *chapter* shall carry public liability insurance in an amount and form of contract approved by the *board*."

Section 22. Section 62-511, R.C.M. 1947, is amended to read as follows:

"62-511. **Parimutuel betting — other betting illegal.** (1) *It is unlawful to make, report, record, or register a bet or wager on the result of a contest of speed, skill, or endurance of an animal, whether the contest is held within or outside of this state, except under this chapter.*

(2) A licensee conducting a race meet under this *chapter* may provide a place in the race meet grounds or *enclosure where the licensee may conduct or supervise the use of the parimutuel system by patrons on the result of the races conducted by the licensee at the race meet, if the*

parimutuel system *is* conducted under this *chapter* and the rules of the board.

(3) It *is* unlawful to conduct pool selling, book making, or to circulate handbooks, or to bet or wager on a race of a licensed race meet, other than by the parimutuel system, and in the race meet grounds or *enclosure* where the race is held, or to permit a minor to use the parimutuel system."

Section 23. Section 62-514, R.C.M. 1947, is amended to read as follows:

"62-514. **Gross receipts — department's percentage — collection and allocation.** The licensee shall pay to the *department* one per cent (1%) of the gross receipts of each day's parimutuel betting at each race meet, which sums shall be paid to the *department* within five (5) days after receipt by the licensee. At the end of each race *meet* the licensee shall prepare a report to the *department* showing the amount of the overpayments and underpayments. If the report *shows* the underpayments to be in excess of the overpayments the balance shall be paid to the *department*. Money paid to the *department* may be *used* for the expenses incurred in carrying out this *chapter*."

Section 24. Section 66-101, R.C.M. 1947, is renumbered 82A-1602.3, and is amended to read as follows:

"82A-1602.3. **Board of architects — appointment — qualifications — term.** (1) *There is a board of architects.*

(2) *The board consists of three (3) members, appointed by the governor with the consent of the senate. Each member shall be a skilled and capable architect, who has been in continuous practice for three (3) years before his appointment. Not more than two (2) members shall be residents of the same county.*

(3) *Each member shall serve for a term of three (3) years."*

Section 25. Section 66-102, R.C.M. 1947, is amended to read as follows:

"66-102. **Organization of board — powers, meetings and records.** (1) The board of *architects* must, during the first week in April of each year, elect from among *its* members a president, secretary, and treasurer, and must have a seal.

(2) The president and secretary *may* administer oaths in *the* examination of applications for certificates, and to witnesses called before the board for the transaction of business under this act.

(3) The board shall meet during the first week of April of each year, and at *other* times, at places the board *determines*.

(4) The *department of professional and occupational licensing* must keep a record of proceedings *of the board*, and also a register of applicants for a certificate, with the name and age of applicants and the number of years spent in the study of architecture, and whether the applicant was granted a certificate or rejected. *The register is prima facie evidence of the matters contained in it."*

Section 26. Section 66-103, R.C.M. 1947, is amended to read as follows:

**"66-103. Definitions — examinations for certificates to practice — granting of certificates — registration without examination under certain circumstances.** (1) Except as provided in this act, no person may practice architecture in *this* state or use the title "architect" or "registered architect," or any words, letters, figures, or other device indicating or intending to imply that he is an architect, without having qualified *under* this act.

(2) *Unless the context requires otherwise, in this act:*

(a) *"Practice of architecture" means* rendering or offering to render services by consultations, preliminary studies, drawings, specifications, or other service in connection with the design of a building or addition or alteration thereto, whether one or all of these services are performed either in person or as the directing head of an organization.

(b) *"Architect" means* an individual technically and legally qualified to practice architecture and who is authorized under this act to practice architecture.

(c) *"Building" means* a structure intended primarily for human occupancy or use.

(d) *"Board" means the board of architects, provided for in section 82A-1602.3.*

(e) *"Department" means the department of professional and occupational licensing, provided for in Title 82A, chapter 16.*

(3) A person wishing to practice architecture in this state shall apply to *the department* for a certificate to do so. A person applying shall have successfully completed the requirement of prerequisites in education, practical experience and a written examination as prescribed by the board in conformance with the standard national council of architectural registration boards examination and grading procedure. After examination *the department* shall, if the candidate has been found qualified, grant a certificate to *the* candidate to practice architecture in *this* state, which may only be granted on the consent of not less than two (2) members of the board, and attested by the secretary, and have the seal of *the* board attached. *However*, an architect holding a valid and current license to practice in another state, territory or country will be granted a certificate to practice in Montana following presentation of a certificate issued by national council of architectural registration boards and approved by the board. But no arrangement may be made under this section which may lower the standard of practice of architecture in *this* state. The board may, if *considered* necessary, require an examination of applicants for a license from other states, after careful consideration of *the* credentials from *those* states. The board shall by *rule* establish methods and procedures for investigation of applicants for a license by reciprocity."

Section 27. Section 66-108, R.C.M. 1947, is amended to read as follows:

**"66-108. Fees payable by applicants for examination — disposi-**

**tion of fees.** (1) Applicants for examination shall pay in advance to the *department* a fee set by the board, *commensurate with the cost*, which shall defray the entire *examination* expense of the candidate. An applicant failing to pass the examination is entitled to a second examination within one (1) year on payment of a reasonable fee, prescribed by the board.

(a) The money received from *the* applicant shall be deposited in the earmarked revenue fund for the use of the board, *subject to section 82A-1603(6).*"

Section 28. Section 66-109, R.C.M. 1947, is amended to read as follows:

**"66-109. Compensation of members of board — disposition and use of funds — report.** (1) Each member of the board is allowed the sum of twenty-five dollars (\$25) per day plus mileage in accordance with section 59-801 and actual and necessary expenses while in the discharge of his actual duties.

(2) All fees and moneys received by *the department* for licenses from practicing architects shall be deposited in the earmarked revenue fund for the use of the board, *subject to section 82A-1603(6).*"

Section 29. Section 66-110, R.C.M. 1947, is amended to read as follows:

**"66-110. Annual fee of licensed architects.** A licensed architect in *this* state who desires to continue the practice of his profession shall annually, during the time he *continues* in *this* practice, pay to the *department*, during the month of July, a fee of twenty dollars (\$20)."

Section 30. Section 66-111, R.C.M. 1947, is amended to read as follows:

**"66-111. Architects moving from state to be granted demit.** A licensed architect *moving* from the state may receive a demit from the board, and if he desires to re-establish himself in the state, the *department* will issue a certificate to him without examination, *if he pays* the regular license fee."

Section 31. Section 66-112, R.C.M. 1947, is amended to read as follows:

**"66-112. Revocation of certificate.** (1) The board may revoke a certificate if proof satisfactory to the board *is* presented of the following: (a) *The* certificate was obtained through fraud or misrepresentation; (b) *The* holder of the certificate has been found guilty by *the* board or by a court of justice of fraud or deceit in his professional practice or has been convicted of a felony by a court of justice; (c) *The* holder of the certificate has been found guilty by *the* board of gross incompetency or of recklessness in the planning or construction of buildings; (d) *The* holder of the certificate has been found guilty by *the* board of any of the following acts which constitute unprofessional conduct: (i) Willful departure in a material respect from approved plans or specifications without the consent of the owner or his authorized representative; (ii) Willful violation of the building codes of *this* state or a political subdivision; (iii) Aiding or abet-



ting *an* unlicensed person to violate or evade this act; or (iv) Sealing or signing plans or specifications not prepared under his direct supervision and control; or (e) *The* holder of the certificate has violated standards of professional conduct adopted by the board.

(2) *A certificate may not be revoked until the party holding the certificate is given notice and an opportunity for a hearing.*

*If the board's findings and conclusions are adverse to the accused, his certificate stands revoked and annulled at the expiration of thirty (30) days from the final decision adverse to the party."*

Section 32. Section 66-113, R.C.M. 1947, is amended to read as follows:

**"66-113. Architects on public buildings must hold certificate from board.** A contract for the employment of or the rendering of professional services by *an* architect relating to the planning or construction of public buildings or other public works or improvements *may not* be entered into by *this* state or *its agencies*, or a county, city, or school district in *this* state unless *the* architect *is* the holder in good standing of a certificate *granted* by the board entitling him to practice architecture in this state."

Section 33. Section 66-401, R.C.M. 1947, is amended to read as follows:

**"66-401. Sanitation of barbershops, barber schools and barber colleges and definition of term barbershop.** (1) *Barbershops*, barber schools, and barber colleges shall be operated and maintained in a sanitary condition *in order* to preserve the public health and prevent the spread of disease. The board of *barbers* and the *department* of health and *environmental sciences* *may adopt* rules to preserve the public health and prevent the spread of disease. A barber, or barber apprentice *may not* receive a certificate of registration or renewal until he has presented to the board of *barbers* a physician's certificate showing him to be free of physical ailments that would tend to endanger the health of the public, and a person practicing barbering without a certificate of registration is guilty of a violation of this *chapter*.

(2) *It is unlawful for a barber, barber apprentice, or student of barbering to practice the occupation of a barber, or do barber work while he has an infectious, contagious, or communicable disease that would endanger the health of the public.*

(3) *If a barber or barber apprentice, after securing his certificate, contracts a communicable, infectious, or contagious disease, endangering the public health, the board of barbers shall revoke or suspend his certificate of registration until the board has satisfactory proof that the barber or barber apprentice is no longer afflicted with the communicable, infectious, or contagious disease."*

Section 34. There is a new section to be numbered 66-401.1, R.C.M. 1947, which reads as follows:

**66-401.1. Definitions.** Unless the context requires otherwise, as used in this chapter:

(1) "Barbershop" means a place where a person carries on, engages in, practices, or causes to be carried on, engaged in, or practiced the business of barbering.

(2) "Board" means the board of barbers, provided for in section 82A-1602.5.

(3) "Department" means the department of professional and occupational licensing, provided for in Title 82A, chapter 16.

Section 35. Section 66-403, R.C.M. 1947, is amended to read as follows:

**"66-403. Licensing and registration of barbers, barbershops, barber schools and barber colleges, prohibiting barber schools and colleges from charging patrons for services.** (1) A person is qualified to receive a certificate of registration to practice barbering only by serving as an apprentice barber and successfully *passing* an examination conducted by the *department*, *subject to section 82A-1603*, to determine his fitness to practice barbering.

(2) An apprentice, *under this chapter*, is a person who receives instruction in an approved barber school or college and from a barber authorized to practice barbering in *this state*.

(3) *An* apprentice must file with the *department* an application setting forth the following information:

- (a) Full name and age of apprentice;
- (b) Name and place of approved barber school;
- (c) Dates of attendance at approved barber school;
- (d) Whether *the* applicant received a certificate of graduation from an approved barber school; *and*
- (e) *Other* information the board *considers* necessary.

(4) *An* apprentice applicant must successfully pass an apprentice examination conducted by the *department*, *subject to section 82A-1603*, and pay to the *department* the required fee. The *department* shall then issue an apprentice barbering card which *expires* two (2) years from the date of examination.

(5) A registered apprentice may *not* independently practice or engage in the practice of barbering; however, he may do the acts which constitute the practice of barbering when done under the immediate personal supervision of a registered barber.

(6) A school or college of barbering *may not* be approved by the board unless it teaches the curriculum of the standardized schools approved by the national education council of barber examiners. Students of schools or colleges may, after attending *the* schools for a period of nine (9) months, make application to the *department* for an apprenticeship card to practice barbering under the immediate personal supervision of a licensed barber for the period of one (1) year.

(7) *On* completion of one (1) year of apprenticeship under the immedi-

ate personal supervision of a licensed barber, an apprentice must apply to the *department* to take the examination for a barber's certificate of registration. An apprentice may take the examination for a barber's certificate of registration as many as three (3) times before expiration of the apprentice card. *If an apprentice fails to pass the examination for a barber's certificate of registration three (3) times, he shall surrender the apprentice card to the department and may not be authorized to do the acts which constitute the practice of barbering.*

(8) A barbershop, school, or college must be conducted at a fixed place of establishment. A person or corporation *may not* open or maintain a barbershop, school, or college, or hold himself or itself out as engaging in or conducting a barbershop, school, or college, unless first licensed by the board. A barber school or college operating *in this state* must *have* in charge a person who has had ten (10) years' continuous experience as a barber. *The owner of the school or college shall first secure a permit, granted by the board and issued by the department, to operate, on payment of an annual license fee of fifty dollars (\$50), and shall keep the permit prominently displayed, and shall, before commencing business, file with the secretary of state a bond to this state, which shall be approved by the attorney general, in the sum of two thousand dollars (\$2,000), conditioned on the faithful compliance of the barber school or college with this chapter, and the payment of judgments that may be obtained against the school, college, or owner on account of fraud, misrepresentation, or deceit practiced by them, or by their agents. Barber schools or barber colleges may not charge patrons for barbering services and materials rendered. All barber schools or colleges shall keep prominently displayed a substantial sign as a barber school or barber college. All barber schools or colleges on receiving students shall immediately apply to the department for student permits on blank forms prescribed by the board.*

(9) An application for a barbershop, school, or college license shall be in writing and verified on a form *prescribed* by the board. *On receipt by the department of an application for a license, and on payment to the department of the initial inspection fee, the board shall have an investigation and inspection made as to the character of the applicant, and on notice and after hearing shall report its findings to the department, which shall grant a license, if the board finds that the applicant is of good character, and that the proposed barbershop, school, or college is equipped and will be conducted as required under this chapter. The application must be granted or refused within thirty (30) days from the date of filing of the application or within fifteen (15) days after the hearing on the application if a hearing is held.*

(10) A barbershop license *may not* be issued to anyone except one who holds a valid barber's certificate *under this chapter, and a barbershop may not be maintained or conducted except by one who holds a barbershop license issued by the department under this chapter, and this certificate or license is not transferable as to person or place.*

(11) Before a license is issued to conduct a barbershop, school, or college in this state *the barbershop, school, or college must be inspected by the department and approved by the board and shall meet the following requirements:*

(a) *It must* have both hot and cold running water connected with *the* city water supply. In villages or towns where running water is not available, hot water tanks shall have not less than *a* two (2) gallon capacity with gravity pressure. Waste water shall be disposed of through some system, carrying it away from the building. This shall be done by sewer connections, or in a manner meeting the requirements of the department of health *and environmental sciences* rules, city ordinances, and having the approval of the city or village board of health, as required by law.

(b) The headrest of *a* barber chair must be equipped so that each customer will be supplied with *a* clean, fresh paper or towel.

(c) *It must* have a closed cabinet for each chair, to keep instruments in when not in use, and must have proper sterilization equipment for immersing instruments before use on each customer.

(d) *It must* have *a* sufficient number of towels so that each customer will be served with a clean laundered towel.

(e) *It must* be well-lighted, well-ventilated, and kept in a clean, orderly and sanitary condition at all times.

(f) *It must* pay to the *department* the required fee.

(12) *Barbershops*, barber schools, or colleges shall be open for inspection during business hours, to *members* of the *department*. An owner or manager of a barbershop licensed under this *chapter* shall make certain that each barber employed holds a certificate to practice barbering in *this state*, and that employees observe the sanitary rules of the department of health *and environmental sciences* and the *department* and report to the *department* the name of *a* person practicing barbering therein, who has a communicable disease."

Section 36. There is a new section to be numbered 66-403.1, R.C.M. 1947, which reads as follows:

66-403.1. **Refusal to issue, renew, or suspend licenses — hearing.** The board may, after notice and opportunity for a hearing, either refuse to issue or renew, or may suspend or revoke a barbershop, or barber school or college license for any one or combination of the following causes:

(1) The violation of any of the provisions of subdivisions (a) through (e) of subsection 11 of section 66-403, subsection 12 of section 66-403, and section 66-405;

(2) Conviction of a felony, shown by a certified copy of the record of the court of conviction;

(3) Gross malpractice or gross incompetency;

(4) Continued practice by a person knowingly having an infectious or contagious disease;

(5) Advertising by means of knowingly false or deceptive statements;

(6) Advertising, practicing, or attempting to practice under a trade name other than one's own;

(7) Habitual drunkenness or addiction to the use of morphine, cocaine, or other habit-forming drugs;

(8) The commission of any of the offenses described in section 66-409.

Section 37. Section 66-405, R.C.M. 1947, is amended to read as follows:

**"66-405. Display of certificate and license.** (1) A holder of a certificate of registration shall display it in a conspicuous place, adjacent to or near his work chair.

(2) A license to operate a barbershop, school, or college shall specify the name of the licensee and shall be kept in a conspicuous place in the barber shop, school, or college. A barber shop, school, or college *may not* be conducted or held *out* as being conducted under any name except the name appearing as licensee on the license issued by the *department*.

(3) A barber shop shall display a schedule of prices in a conspicuous place."

Section 38. Section 66-406, R.C.M. 1947, is renumbered 82A-1602.5, and is amended to read as follows:

**"82A-1602.5. Board of barbers — appointment — qualifications — term.** (1) *There is a board of barbers.*

(2) *The board consists of three (3) members appointed by the governor. Each member shall be a practicing barber who has been a barber in this state for at least five (5) years immediately before his appointment.*

(3) *Each member shall serve for a term of three (3) years. The governor may remove a member for cause."*

Section 39. Section 66-407, R.C.M. 1947, is amended to read as follows:

**"66-407. Officers, official seal.** The board shall elect a president, secretary, and treasurer. It shall adopt a seal for the authentication of its orders and records. The *department* shall keep a record of proceedings of the board. *Money* collected by the *department* shall be deposited in the earmarked revenue fund for the use of the board, *subject to section 82A-1603(6).*"

Section 40. Section 66-408, R.C.M. 1947, is amended to read as follows:

**"66-408. Compensation.** Each member of the board shall receive a compensation of twenty-five dollars (\$25) per day while attending board meetings *plus* legitimate and necessary expenses incurred in attending *meetings of the board.*"

Section 41. Section 66-409, R.C.M. 1947, is amended to read as follows:

**"66-409. Powers and duties.** (1) The *department* shall, *subject to section 82A-1603*, conduct practical examinations of applicants for apprentice cards and for certificates of registration to practice as regis-

tered barbers, not less than four (4) times each year at *times* and places the board *determines*. The examinations shall cover the fundamentals of barbering, dermatology, and sanitation. The *department* shall issue apprentice cards and certificates of registration.

(2) The board *may* approve price agreements, establishing minimum prices for barber work, signed and submitted to the board by *an* organized group or groups of at least *seventy-five percent (75%)* of the barbers in a city or town, *if* the board after ascertaining by investigations and proofs as the *situation* permits and requires, *finds* that *the* price agreement is just and will best protect the public health and safety by affording a sufficient minimum price for barber work to enable the barbers to furnish modern and healthful services and appliances to minimize the danger to the public health incident to *this* work. *Under this chapter*, a city or town *includes*, in addition to the territory within its legal limits, the territory adjacent to it and lying within three (3) miles of *its* legal limits. In determining whether a price agreement is just and will best protect the public health and safety, the board shall take into consideration all conditions affecting the barber business in its relation to the public health and safety.

(3) In determining reasonable minimum prices the board shall take into consideration the necessary cost incurred in the city or town *to maintain* a barbershop in a clean, healthful, and sanitary condition.

(4) The board, after making *an* investigation, shall fix by order the minimum price for work usually performed in a barbershop *in* the city or town in which *the* price agreement has been signed. The board may, *on* the petition of *fifty percent (50%)* of the barbers of the city or town, readjust the minimum prices, and *the* new prices must be approved by *seventy-five percent (75%)* of the barbers in the city or town. *This section does not apply* to students who have been enrolled less than *nine (9)* months in a barber college in *this* state or until they become apprentice barbers.

(5) The board *may adopt* rules for the administration of *this chapter*.

(6) *A person hired by the department to make an inspection of a barbershop, school, or college shall be recommended by the board.*

*He shall receive thirty dollars (\$30) per day plus actual and necessary expenses."*

Section 42. Section 66-410, R.C.M. 1947, is amended to read as follows:

"66-410. **Penalty.** A person practicing the occupation of a barber without first having obtained a license, *under this chapter*, or a person knowingly employing a barber who has not obtained a license, or a person who falsely pretends to be qualified to practice *the* occupation of a barber, or a person who violates *this chapter* is guilty of a misdemeanor, and *on* conviction shall be *finned* not less than twenty-five dollars (\$25) nor more than two hundred dollars (\$200), or *imprisoned* in the county jail for not less than ten (10) days nor more than ninety (90) days, or both. In addition, the board may, after hearing, suspend or revoke a barber's certificate

of registration, or license to operate a barber shop, school, or college, or both, by reason of *the* person willfully violating this *chapter* or persistently failing to conform to the rules *adopted* by the board."

Section 43. Section 66-411, R.C.M. 1947, is amended to read as follows:

"66-411. **Fees to be paid by apprentices, students, barbers, barbershops and training programs.** (1) The fee to be paid by an apprentice for an apprentice examination and an apprentice card is twenty-five dollars (\$25). The fee to be paid by an applicant for an examination to determine his fitness to receive a certificate of registration to practice barbering is twenty dollars (\$20), and for the issuance of *the* certificate an additional ten dollars (\$10).

(2) A person registered as a barber or barber apprentice shall, before July 1 of each year, pay a license fee of ten dollars (\$10) for the renewal of his certificate of registration. *If a barber fails to have the certificate renewed before July 1 of each year the barber shall on renewal of the certificate of registration pay a penalty of ten dollars (\$10), in addition to the regular fee of ten dollars (\$10). If a certificate of registration is not renewed within one (1) year after the date of expiration, the barber is not entitled to have the certificate of registration renewed, or a new certificate of registration issued, without first applying for and taking the examination and paying the fees provided for in this section. However, physically handicapped persons, trained for the barber profession by the department of social and rehabilitation services and certified by that department as having successfully completed a nine (9) month course in a reputable barber college are not required to pay fees, and are for a period of one (1) year immediately following their training exempt from all except the sanitary provisions of this chapter. No other or additional license or fee may be imposed on barbers or barber apprentices by a municipality or other subdivision of this state.*

(3) In addition to the fees and charges now provided by law, barbershops heretofore established, and which have been under the inspection of the board shall pay an annual license fee of ten dollars (\$10). Barbershops hereafter established shall pay an initial inspection fee of twenty dollars (\$20) for the first year or portion thereof, and shall pay an annual license fee of ten dollars (\$10).

(4) *Barbershop, school, or college licenses expire on July 1 of each year, following the issuance of the license, and an owner or manager of a barbershop, school, or college which continues in active operation shall annually, before July 1, renew his barbershop, school, or college license and pay the required fee. A barbershop which fails to have the license renewed before July 1 of each year shall, on renewal, pay a penalty of ten dollars (\$10), and a barber school or college which fails to have the license renewed before July 1 of each year shall, on renewal, pay a penalty of fifty-five dollars (\$55).*

Any person conducting in this state any advanced barber training program, clinic, or seminar for barbers as defined in this chapter, shall pay an annual license fee of fifty dollars (\$50) to the *department*, or a ten

(10) day license fee of fifteen dollars (\$15), and display the license while operating. Any such advanced barber training program, clinic, or seminar may be inspected by the *department* at reasonable times during operation."

Section 44. Section 66-412, R.C.M. 1947, is amended to read as follows:

"66-412. **Barber's registration and license.** (1) *A person may not practice or attempt to practice barbering or serve or attempt to serve as a barber apprentice unless he first receives from the department a certificate of registration.*

(2) *It is unlawful to operate a barber shop, school, or college unless it has first been issued a license by the department under this chapter.*"

Section 45. Section 66-501, R.C.M. 1947, is renumbered 82A-1602.7, and is amended to read as follows:

"82A-1602.7. **Board of chiropractors — appointment — qualifications — term.** (1) *There is a board of chiropractors.*

(2) *The board consists of three (3) members appointed by the governor. The members shall be practicing chiropractors of integrity and ability who shall be residents of this state, and who have practiced chiropractic continuously in this state for at least one (1) year. No two (2) members shall be graduates of the same school or college of chiropractic.*

(3) *Each member shall serve for a term of three (3) years. A member may be removed from office by the governor on sufficient proof of the member's inability or misconduct.*"

Section 46. There is a new section to be numbered 66-501.1, R.C.M. 1947, which reads as follows:

66-501.1. **Definitions.** Unless the context requires otherwise, in this chapter:

(1) "Board" means the board of chiropractors, provided for in section 82A-1602.7.

(2) "Department" means the department of professional and occupational licensing, provided for in Title 82A, chapter 16.

Section 47. Section 66-503, R.C.M. 1947, is amended to read as follows:

"66-503. **Organization of board — meetings — powers and duties.** (1) *The board shall elect annually a president, vice-president, and secretary-treasurer from its membership.*

(2) *The board shall hold a regular meeting on the first Tuesday of October in each year at Helena, and shall hold special meetings at times and places as a majority of the board designates. Not more than four (4) meetings may be held in any one (1) year. A majority of the board constitutes a quorum.*

(3) *The board may administer oaths, take affidavits, summon wit-*



nesses, and take testimony as to matters coming within the scope of the board. *It shall adopt a seal, which shall be affixed to licenses issued, and shall make rules necessary for the performance of its duties, and shall make a schedule of minimum educational requirements, which are without prejudice, partiality, or discrimination as to the different schools of chiropractic. The department shall keep a record of the proceedings of the board, which shall at all times be open to public inspection.*"

Section 48. Section 66-504, R.C.M. 1947, is amended to read as follows:

**"66-504. Practicing without license — temporary permits.** (1) *It is unlawful for a person to practice chiropractic in this state without first obtaining a license under this act.*

(2) *When application for examination for license is filed with the department, under section 66-505, the board may authorize the department to issue to the applicant a temporary permit to practice, which is good until the next meeting of the board.*"

Section 49. Section 66-505, R.C.M. 1947, is amended to read as follows:

**"66-505. Applications to practice — fees for license.** (1) *A person wishing to practice chiropractic in this state shall make application to the department on the form and in the manner prescribed by the board, at least fifteen (15) days prior to a meeting of the board. Each applicant shall be a graduate of a college of chiropractic approved by the board in which he has attended a course of study of four (4) school years of not less than nine (9) months each, and shall present evidence showing completion of two (2) full academic years of college or university work from an institution acceptable to the board of education. Application shall be made in writing and shall be sworn to by an officer authorized to administer oaths, and shall recite the history of applicant's educational qualifications, how long he has studied chiropractic, of what school or college he is a graduate, and the length of time he has been engaged in practice, accompanying the same with proofs by diplomas, certificates, etc., and shall accompany the application with satisfactory evidence of good character and reputation.*

(2) *There shall be paid to the department, by an applicant for a license, a fee of fifty dollars (\$50), twenty-five dollars (\$25) of which shall accompany the application and the remainder shall be paid on the issuance of the license. Like fees shall be paid for a subsequent examination and application.*"

Section 50. Section 66-506, R.C.M. 1947, is amended to read as follows:

**"66-506. Examinations — subjects embraced in.** (1) *Examinations for a license to practice chiropractic shall be made by the department subject to section 82A-1603, according to the method considered by the board to be the most practicable and expeditious to test the applicant's qualifications. The application shall be designated by a number instead of the applicant's name, so that the identity will not be discovered or disclosed until after the examination papers are graded.*

(2) *Examinations* shall be made in writing, the subjects of which *are* as follows: *anatomy*, physiology, symptomatology, diagnosis, chiropractic orthopedy, principles of chiropractic and adjusting, sanitation and hygiene, urinalysis, gynecology, and palpation. Additional subjects may be prescribed by the board to meet new conditions. A license shall be granted to applicants who correctly answer seventy-five percent (75%) of all questions asked, and if *an* applicant *fails* to answer correctly sixty percent (60%) of the questions on any branch of *the* examination, he *is* not entitled to a license.

(3) The board may accept the grades an applicant has received in the written examinations given by the national board of chiropractic examiners and may *authorize the department to issue* a license without further written examination to an applicant who holds a valid certificate from the national board of chiropractic examiners, *if the* applicant meets the other requirements of this chapter and satisfactorily passes a practical examination before the *department, subject to section 82A-1603.*"

Section 51. Section 66-510, R.C.M. 1947, is amended to read as follows:

"66-510. **Refusal and revocation of license — proceedings — reinstatement.** (1) The board may *revoke or* refuse to grant a license to practice chiropractic in this state, or may cause a *licensee's* name to be removed from the records in the office of the *clerk and* recorder in this state *on* the following grounds: The employment of fraud or deception in applying for a license or in passing an examination *under* this act; practice of chiropractic under a false or assumed name or the impersonation of another practitioner of like or different name; conviction of a crime involving moral turpitude; *or* habitual intemperance in the use of *alcohol*, narcotics, or stimulants to such an extent as to incapacitate him for the performance of *his* professional duties. A person who is a *licensee*, or an applicant for a license to practice chiropractic, against whom grounds for revoking or refusing a license is presented to *the* board with a view of having the board revoke or refuse to grant a license, shall have *notice and* a hearing before *the* board in respecting the guilt or innocence of *the person*.

(2) *The* board may within two (2) years of the refusal, revocation, or cancellation of registration under this section, by a majority vote, *authorize the department to* issue a new license or grant a license to the person affected, restoring him to or conferring *on* him the rights and privileges of the practice of chiropractic. A person to whom *these* rights and privileges have been restored shall pay to the *department* the sum of fifty dollars (\$50) *on* issuance of a new license."

Section 52. Section 66-511, R.C.M. 1947, is amended to read as follows:

"66-511. **Recordation of license — failure or refusal to record.** (1) A person who *receives* a license from the *department* shall have it recorded in the office of the *clerk and* recorder of the county of which he resides, and shall have it recorded in the counties to which he subsequently *moves* for the purpose of practicing chiropractic.

(2) The failure or refusal on the part of the holder of a license to have it recorded before he *practices* chiropractic in this state, after having been notified by the *department* to do so, *is* sufficient grounds to revoke or cancel a license and render it void. The *clerk and recorder* shall keep for public inspection, in a book provided for that purpose, a complete list and description of the licenses recorded by him. When *a license is* presented to him for record, he shall stamp *on its* face his signed memorandum of the date when *the* license was presented for record."

Section 53. Section 66-512, R.C.M. 1947, is amended to read as follows:

"66-512. **Renewal of license.** A license *expires* on September 1 of each year, and shall be renewed by the *department*, on payment of a renewal fee of not less than five dollars (\$5) nor more than twenty-five dollars (\$25), as set by the board, and the presentation of evidence satisfactory to *the* board that the licensee, in the year preceding the application for renewal, attended an educational program for chiropractors conducted by a school of chiropractic licensed to operate in the state of its location, or an educational program conducted by the state association of licensed chiropractors of a state, or an educational program approved by the board. *However*, the board may *authorize the department to issue* renewals, but not consecutive renewals, on a showing satisfactory to *the* board that attendance *at the* educational programs was unavoidably prevented; and new licensees during the six (6) months preceding September 1, by examination, shall be granted renewal licenses without attending *the* educational programs. *Failure* to renew a license *does not* prevent a licensee from subsequently applying for and receiving a license, as if there were no lapse of time between the expiration of the old license, and the granting of a renewal license. *This section does not* prevent a renewal of the license if in *the* preceding year for any reason, at least one of the educational programs is not conducted in *this* state."

Section 54. Section 66-513, R.C.M. 1947, is amended to read as follows:

"66-513. **Disposition of fees — receipts and disbursements — reports — per diem and mileage.** (1) *Fees collected by the department* under this act shall be *deposited* in the earmarked revenue fund for the use of the board, *subject to section 82A-1603(6).*

(2) The *department* shall keep *an* accurate account of funds received and vouchers issued by the *department*.

(3) The members of *the* board shall receive twenty-five dollars (\$25) for each day during which they *are* actually engaged in the discharge of their duties, *plus mileage as provided in section 59-801, and reimbursement for actual and necessary expenses incurred.*"

Section 55. Section 66-601, R.C.M. 1947, is amended to read as follows:

"66-601. **Definitions.** *Unless the context requires otherwise, in this act:* (1) "*Chiropody*" or "*podiatry*" means the diagnosis, medical, surgical, mechanical, manipulative, and electrical treatment of ailments of the human foot.

(2) "*Podiatrist*" means one practicing podiatry.

(3) "*Board*" means the board of podiatry examiners, provided for in section 82A-1602.6.

(4) "*Department*" means the department of professional and occupational licensing, provided for in Title 82A, chapter 16."

Section 56. Section 66-602, R.C.M. 1947, is amended to read as follows:

"66-602. **License — amputations not allowed.** It is unlawful for a person to profess to be a *podiatrist*, to practice or assume the duties incident to *podiatry*, or to advertise in any form or hold himself out to the public as a chiropodist or podiatrist, or in a sign or advertisement to use the word chiropodist or podiatrist, foot correctionist, or any other term, terms, or letters indicating to the public that *he is holding himself out as a podiatrist* or foot correctionist in any manner, without first obtaining from the board a license authorizing the practice of *podiatry* in this state, except *under this act*. A *podiatrist may not* amputate the human foot or toe, or administer an anesthetic other than local."

Section 57. Section 66-603, R.C.M. 1947, is amended to read as follows:

"66-603. **Examinations schools — fees — nonresident practitioners.** Examinations shall be held semiannually at places and time the board *directs*. Persons who wish to begin *the* practice of podiatry in this state, shall make application *on* a form authorized by *the* state board of medical examiners *and furnished by the department*, for a license to practice podiatry. This application shall be granted to applicants after they have furnished satisfactory proof of good moral character, of having attained high school graduation or its equivalent and of having at least two (2) years of instruction in an accredited school of podiatry recognized as being in good standing by the board, but *a school of podiatry may not* be accredited by *the* board *if it* does not require for graduation four (4) years of instruction in the study of podiatry. A license without written examination may be issued to podiatrists of other states maintaining equal statutory requirements for the practice of podiatry and extending the same reciprocal privilege to this state *if* they have had a valid license for at least two (2) years in that state prior to filing for reciprocal privilege, and by payment of fifty dollars (\$50) to the *department*."

Section 58. Section 66-604, R.C.M. 1947, is amended to read as follows:

"66-604. **Examination — fees.** A person not exempt from examination under section 66-603 and desiring a license to practice *podiatry* shall be examined in the following subjects: *anatomy*, chemistry, dermatology, diagnosis, materia medica, pathology, physiology, therapeutics, clinical and orthopedic *podiatry*, histology, bacteriology, pharmacy, neurology, surgery (minor), *podiatry*, foot orthopedica, shoe therapy, physiotherapy, roentgenology, hygiene and sanitation, ethics, and culture, limited in their scope to the treatment of the human foot, and, if qualified, shall receive a license. The minimum requirements for a license *are* a general average of seventy-five percent (75%) in all the subjects involved, and not less than fifty percent (50%) in any one subject. An examination and license fee

of thirty-five dollars (\$35) shall be paid to the *department*. An applicant failing in the examination and being refused a license *is* entitled within six (6) months of *the* refusal to a re-examination, but one re-examination *exhausts* his privilege under the original examination."

Section 59. Section 66-605, R.C.M. 1947, is amended to read as follows:

"66-605. **Designation of licensees — renewals — reissuance of license — display of license required — recording necessary.** A license issued *under this act* shall be designated as a "registered *podiatrist's* license" and *may* not contain any abbreviations thereof, nor any other designation or title except that a statement of limitation shall be contained in *the* license referring to the licensee as a "registered *podiatrist* — practice limited to the foot," so as not to mislead the public *with respect* to their right to treat other portions of the body. *Licenses* shall be recorded by the *department* the *same as* other medical licenses. *The* person receiving *the* license shall have it recorded in the office of the county clerk in the county in which he resides, and the record shall be endorsed *on it*. *If* the person licensed *moves* to another county to practice, *he* shall record the license in *the same* manner in the county into which he *moves*, and the county clerk is entitled to charge and receive the usual fee for making *this* record. A renewal license fee of three dollars (\$3) shall be paid annually on July 1 of each year, and if not paid within three (3) months, the license shall be revoked and *may* be reissued only *on* original application and payment of a fee of thirty-five dollars (\$35). *Licenses* shall be conspicuously displayed by *podiatrists* at their offices or other places of practice."

Section 60. Section 66-606, R.C.M. 1947, is amended to read as follows:

"66-606. **Refusal or revocation of license.** The board may, after *notice and opportunity* for a hearing, refuse to grant, *renew*, or *it may revoke* a license *under this act* to a person, otherwise qualified, who obtained *the* license by fraudulent representation, for incompetency in practice, for use of untruthful or improbable statements to patients or in his advertisements, for habitual intoxication, for unprofessional and immoral conduct, or for selling or giving away alcohol or drugs for *an* illegal purpose, but *the* board may *authorize the department* to reissue a license after six (6) months, if in its judgment *the* act, acts, or conditions of disqualification have been remedied."

Section 61. Section 66-607, R.C.M. 1947, is amended to read as follows:

"66-607. **Deposit of moneys collected.** *Fees* and licenses shall be collected by the *department* and *deposited in* the earmarked revenue fund for the use of the state board of medical examiners, *subject to section 82A-1603(6).*"

Section 62. Section 66-608, R.C.M. 1947, is amended to read as follows:

"66-608. **Compensation of board — expenses.** Each member of the board, except the physician members, who are otherwise paid for the per-

formance of their duties as medical examiners, shall receive for his services the sum of five dollars (\$5) per diem and necessary traveling and incidental expenses. *Other* contingent expenses, necessarily incurred, shall be paid by the state *department in the same manner as other expenses of the state board of medical examiners.*"

Section 63. Section 66-801, R.C.M. 1947, is amended to read as follows:

**"66-801. License required to practice or teach cosmetology or operate a beauty shop, cosmetological establishment or school — registration of schools of cosmetology.** No person *may* practice or teach cosmetology without a license and no place *may* be used or maintained for the teaching of cosmetology for compensation, except under a certificate of registration, and no person *may* operate, manage, or conduct a beauty shop or school and teach the art or practice without a manager-operator license. No manager-operator license *may* be issued unless the applicant *has* been actively engaged in or teaching the practice of cosmetology in this state for a period of one (1) year preceding *the* application in addition to possessing the other requirements for a practitioner or teacher of cosmetology. A person, firm, copartnership, or corporation desiring to operate a cosmetological establishment shall make an application to the *department of professional and occupational licensing* for a certificate of registration and license. The application shall be accompanied by the annual registration fee."

Section 64. Section 66-802, R.C.M. 1947, is amended to read as follows:

**"66-802. Definitions.** *Unless the context requires otherwise, in this act:* (1) *"Practice and teaching of cosmetology"* includes work generally and usually included in the term "hairdressing" and "beauty culture" and performed in so-called hairdressing and beauty shops, or by itinerant cosmetologists, which work is done for the embellishment, cleanliness, and beautification of the hair, scalp, face, arms, or hands. *However, "itinerant cosmetologist" does not include itinerant cosmetologists who perform their services without compensation for demonstration purposes, in a regularly established store or place of business, holding a license from this state as a store or place of business. "Practice and teaching of cosmetology" does not include cosmetological artists who demonstrate cosmetological skills under the auspices of the state association of cosmetology or its affiliated units, whether at meetings or in licensed cosmetological establishments.*

(2) *"Cosmetological establishment" means premises, building, or part of a building in which is practiced a branch or combination of branches of cosmetology, or the occupation of a hairdresser and cosmetician or cosmetologist, and which must have a manager-operator in charge.*

(3) *"Board" means the board of cosmetologists, provided for in section 82A-1602.8.*

(4) *"Department" means the department of professional and occupational licensing, provided for in Title 82A, chapter 16."*

Section 65. Section 66-803, R.C.M. 1947, is amended to read as follows:

**"66-803. Requirements for practicing or teaching cosmetology or operating a school of cosmetology.** (1) Before *one* may practice or teach cosmetology, or *a* person, firm, copartnership, or corporation may operate a school of cosmetology, *the* person, firm, copartnership, or corporation must obtain a license or certificate of registration from the *department*. To be eligible to take the examination to practice cosmetology the applicant must not be less than eighteen (18) years of age, a graduate of the eighth grade, and of good moral character. *The* applicant must have completed a continuous course of study of at least two thousand (2,000) hours in a registered beauty school, which course of study has been distributed over a period of not less than ten (10) months or more than fourteen (14) months, and *must have* received a diploma from *the* beauty school, or must have completed the course of study in cosmetology prescribed by the board of education. *The* person qualified must file with the *department* a written application to take *the* examination accompanied by a health certificate issued by a registered, licensed physician on a form supplied by the *department*, and shall deposit with the *department* the required examination fee and pass an examination as to his fitness to practice cosmetology.

(2) Before an applicant may take an examination to obtain a license as a teacher of cosmetology, he must:

(a) Be a graduate of high school or possess an equivalent of a high school diploma recognized by the superintendent of public instruction.

(b) Meet the following requirements:

(i) He must have an operator's license to practice cosmetology issued by the *department*, been actively engaged as a beauty operator for one (1) continuous year immediately prior to taking the examination, and have received a diploma from a registered school of cosmetology approved by the board certifying satisfactory completion of five hundred (500) hours of student teacher training; or

(ii) He must have been actively engaged as a beauty operator for three (3) continuous years immediately prior to taking the teachers' examination.

(3) The applicant must qualify by filing an application prescribed by the board and by taking and passing the examination prescribed by the board *and given by the department, subject to section 82A-1603*. The license must be renewed annually *under* section 66-816.

(4) Anyone failing twice to pass an examination may not apply to retake the examination:

(a) Sooner than six (6) months after the date of the second failure; or

(b) Until he has taken two hundred (200) hours additional teacher training at a registered school of cosmetology approved by the board.

(5) *The* board may *authorize the department to* grant to graduates of registered schools of this state *on the payment of the fee prescribed by law*, a temporary license authorizing *the* graduates to practice as an oper-

ator under the supervision of a licensed cosmetologist, in the practice of hairdressing and beauty culture, for a period of not to exceed ninety (90) days, or until the next examination is held by the *department*, and the results are announced. No temporary license *may* be issued except *on* the presentation by the applicant of a certificate of graduation from a registered school of *this* state. *The* temporary licenses *are* not renewable.

(6) No person, firm, copartnership, or corporation *may* operate a school for the purpose of teaching cosmetology for compensation unless a certificate of registration has been first obtained from the *department*. Application for *the* certificate shall be filed with *the department* on a form *prescribed* by the board.

(7) No teacher or student teacher *may* be permitted to practice cosmetology on the public in a school. A school that enrolls student teachers for a course of student teacher training *may* not have at any one time more than one (1) student teacher for each full-time licensed teacher actively engaged at the school. The student teachers may not substitute for full-time teachers.

(8) No school for teaching cosmetology *may* be granted a certificate of registration unless it complies, or can comply, with the following requirements:

(a) Have in its employ a licensed teacher who *is*, at all times, in the immediate supervision of the work of the school, or other teachers the board *determines* are necessary for the proper conduct of *the* school. *There may* not be more than twenty-five (25) students to each teacher.

(b) It shall possess apparatus and equipment the board *determines* is necessary for the ready and full teaching of all subjects or practices of cosmetology.

(c) It shall maintain a school term of not less than two thousand (2,000) hours, and shall prescribe a course of practical training and technical *instruction* equal to the requirements for board examinations, which course of training and technical instruction shall be prescribed by the board.

(d) It shall keep a daily record of the attendance of each student, establish grades, and hold examinations before issuing diplomas.

(e) No owner or person in charge of a school of cosmetology *may* permit a person to sleep in or use for residential purposes, or any other purpose which would tend to make the room unsanitary, a room used, wholly or in part for a school of cosmetology.

(f) Licenses or certificates of registration may be refused, revoked, or suspended, as provided in section 66-811.

(g) The board *may make* further rules necessary for the proper conduct of schools of cosmetology.

(h) The board shall require of the person, firm, copartnership, or corporation operating a school to furnish a good and sufficient bond in the amount of five thousand dollars (\$5,000) and in a form and manner prescribed by the board.



(i) No professional beauty shop *may* be operated in connection with a school of cosmetology.

(j) The board may, by *rule*, establish suitable curriculum for teachers' training in registered schools of cosmetology.

(9) If a licensee *contracts* a communicable disease, endangering the public health, the board shall, *on proof of it*, cancel or suspend his license until *the* licensee can secure a physician's certificate showing that *he* is free from a communicable disease."

Section 66. Section 66-805, R.C.M. 1947, is amended to read as follows:

"66-805. **Meeting — officers to be selected.** The board shall annually, before March 1, elect from *its* number a president, vice-president, and secretary-treasurer."

Section 67. Section 66-806, R.C.M. 1947, is amended to read as follows:

"66-806. **Power of board to adopt rules and to approve price agreements.** (1) The board *may* approve price agreements among licensed practitioners and students in beauty schools, *by which* minimum prices for hairdressing and beauty culture are established by explicit written agreement signed and executed by at least seventy-five *percent (75%)* of the practitioners in *a county in this state*, and submitted to the board by *the* signing group over *their* signatures of all thereof. *Beauty* schools shall charge for students' work not less than fifty *percent (50%)* of the established minimum prices, as determined and approved by seventy-five *percent (75%)* of the practitioners in *the* area. *On receipt of the* price agreements, the board shall investigate the reasons *for it* and the justification *for the* agreement. *If* the board, in its discretion, concludes that the price agreement is just and under the conditions obtaining for the particular territory involved, will best protect the public health and safety by affording a sufficient minimum price for hairdressing and beauty culture to enable the practitioners to furnish modern and healthful services, and appliances to minimize danger to the public health, the board may approve *the* agreements for the term proposed or for *a* shorter term as the board *considers* proper.

(2) The board *may* also consider separately the petition of an incorporated town or city, when accompanied by the signatures of at least two-thirds ( $\frac{2}{3}$ ) of the licensed practitioners in *the* town or city and the board may approve, if necessary, according to the purpose of this *chapter*, changes in existing price agreements or establish new agreements, when approved by seventy-five *percent (75%)* of the licensed practitioners within *the* town or city. *Other* communities and territory adjacent to *a* town or city and other areas in the county shall abide by the rules and agreements prescribed for that particular county. *For the purpose of this subsection, a city or town includes, in addition to the territory lying within its legal boundaries, the territory adjacent to it and lying within three (3) miles of the legal boundaries, in any direction.*

(3) In determining whether *a* price agreement is necessary and just,

and will protect the public health and safety, the board shall give consideration to all conditions affecting hairdressing and the beauty culture art, as practiced, in its relation to public health and safety, and also to the necessary costs incurred in the particular territorial area in maintaining shops or parlors in sanitary and attractive condition. The board shall, on its own initiative, *request the department to, and the department shall* investigate conditions existing in the practice of cosmetology throughout the state, and shall establish new or modify existing minimum prices *when it appears that this action is* in the best interests of public health and safety and in keeping with the purposes and objectives of this act. In no event *may a* minimum price agreement or standard be established, approved, modified, or abolished, except after public hearing. *Notice of the hearing and the purpose, time, and place thereof shall* be mailed by the *department* to every licensed practitioner in the area affected, as *it appears in* the records of the *department*, and *it* shall be published at least once in a newspaper of general circulation which the board *considers* most likely to give notice to the public, *the* mailing and publication to be done not less than ten (10) days prior to the hearing.

(4) The price agreement, as proposed or modified by the board, shall be put into effect by order of the board, which shall plainly state the minimum price for all work usually performed in a beauty shop or parlor in the county, city, or town in which the price agreement has been signed, and for which it is effective, and thereafter no person subject to this act *may* advertise or sell service for less than the minimum price *in* the area for which *the* price was established. If the board either *on* petition of two-thirds (2/3) of the signatories to *the* price agreement, or *on* the board's initial motion, finds that the minimum prices fixed by its order are insufficient or improperly adjusted to provide healthful services to the public and keep the shops and parlors in a safe, sanitary, and attractive condition, *it may* modify *the* minimum prices by prescribing increases, adjustments, or decreases, if necessary, best calculated to realize *the* objectives.

(5) The board shall prescribe rules for the conduct of its business; the qualification, examination, and registration of applicants to practice or teach cosmetology; applicants for manager-operator licenses; the regulation and instruction of apprentices and students; the conduct of schools of cosmetology for apprentices and students; and generally for the conduct of the persons, firms, or corporations affected by this act.

(6) *The board shall adopt a seal and authenticate its acts."*

Section 68. Section 66-807, R.C.M. 1947, is amended to read as follows:

"66-807. **Registration — licenses.** If the board finds that an applicant for examination, or for certificate of registration, has complied with the requirements of this act and has paid the required fee, the board shall admit *the* applicant to examination and shall *authorize the department* to issue a license or certificate of registration to those who have successfully passed *the* examination or are entitled to *the* certificate of registration *under this act."*

Section 69. Section 66-808, R.C.M. 1947, is amended to read as follows:

"66-808. **Examinations.** (1) Examinations for operator's license shall be held at least two (2) times a year and not more than five (5) times a year and for teacher's license once each year, at a place and time specified by *the board*. *The examinations shall be conducted by the department, subject to section 82A-1603.* The examinations *may* not be confined to a specific method or system.

(2) *Physically handicapped persons trained for cosmetology by the department of social and rehabilitation services shall, for a period of one (1) year immediately following their graduation, be exempt from the examination and the fees described in section 66-815. On certification from the department of social and rehabilitation services that a department of social and rehabilitation services beneficiary has successfully completed the required apprenticeship or training in a shop or beauty school, the department shall issue the person the necessary certificate or license to practice the profession in this state."*

Section 70. Section 66-809, R.C.M. 1947, is amended to read as follows:

"66-809. **Compensation of members of board — deposit of receipts in state treasury.** Each member of the board shall receive, as compensation for his services, the sum of twenty dollars (\$20) for each day's actual attendance at board meetings, not to exceed three (3) consecutive days, and each member shall be reimbursed for his expenses necessarily incurred in the performance of his duties. All *fees collected by the department under this act* shall be deposited in the earmarked revenue fund for the use of the board, *subject to section 82A-1603(6).*"

Section 71. Section 66-811, R.C.M. 1947, is amended to read as follows:

"66-811. **Powers and duties of the board to refuse, revoke, or suspend licenses.** The board *may refuse to issue, refuse to renew, or may revoke, or suspend a license in any one of the following cases: (1) Failure of a person, firm, copartnership, or corporation operating a cosmetological establishment or school of cosmetology to comply with this act; (2) failure to comply with the sanitary rules, adopted by the board and approved by the department of health and environmental sciences, for the regulation of cosmetological establishments or schools of cosmetology; (3) gross malpractice; (4) continued practice by a person knowingly having an infectious or contagious disease; (5) habitual drunkenness, or habitual addiction to the use of morphine or any habit-forming drugs; (6) permitting a certificate of registration or license to be used where the holder is not personally, actively, and continuously engaged in business; or (7) failure to display the license. However, the board may not refuse to authorize the department to issue or renew a license, or revoke or suspend a license already issued, until after notice and opportunity for a hearing."*

Section 72. Section 66-812, R.C.M. 1947, is amended to read as follows:

"66-812. **Sanitary rules.** The board, subject to the approval of the *department of health and environmental sciences*, shall prescribe sanitary rules it *considers* necessary, with particular reference to the precautions

necessary to be employed to prevent the creating and spread of infectious and contagious diseases."

Section 73. Section 66-813, R.C.M. 1947, is amended to read as follows:

"66-813. **Inspector of beauty parlors.** The *department* shall appoint one (1) or more inspectors who are licensed to practice under this act, each of whom shall devote his time to inspecting beauty parlors and performing other duties as the *department* may direct. *The* inspectors may enter a beauty parlor or school of cosmetology during business hours for the purpose of inspection, and the refusal of a licensee to permit *the* inspection during business hours *is* cause for revocation of *the* license."

Section 74. Section 66-815, R.C.M. 1947, is amended to read as follows:

"66-815. **Fees.** *Fees* for licenses and certificates of registration shall be paid to the *department* not to exceed the following respective amounts prescribed by the board. (1) A student enrolling in a registered cosmetology school shall pay a registration fee of three dollars and fifty cents (\$3.50) to the *department*.

(2) An applicant for examination to practice shall pay at the time of the application a fee of twenty dollars (\$20).

(3) An applicant for examination who is a graduate from a cosmetology school of this state may pay a fee of four dollars (\$4) for a temporary license to practice as an operator.

(4) An applicant for examination to teach shall pay at the time of the application a fee of thirty dollars (\$30).

(5) A person practicing cosmetology as an operator shall pay a fee of six dollars (\$6) for the issuance of a license.

(6) An applicant for a manager-operator license shall pay a fee of ten dollars (\$10) for the issuance of a license.

(7) An applicant for an itinerant license as a cosmetologist shall pay a fee of fifty dollars (\$50).

(8) A person, firm, copartnership, or corporation owning, operating, or conducting a cosmetological salon shall pay the sum of ten dollars (\$10) for the issuance of the certificate of registration.

(9) A person teaching or instructing cosmetology shall pay a fee of ten dollars (\$10) for the issuance of a license.

(10) A person, firm, copartnership, or corporation owning, operating, or conducting a school of cosmetology shall pay the sum of fifty dollars (\$50) for a certificate of registration.

(11) A person, firm, copartnership, or corporation owning, operating, or conducting an advanced school of cosmetology shall pay the sum of fifty dollars (\$50) for a certificate of registration.

(12) A person, firm, copartnership, or corporation owning, operating, or

conducting a teacher-training unit in a school of cosmetology shall pay the sum of fifty dollars (\$50) for a certificate of registration.

(13) Duplicate licenses or certificates of registration shall be issued *on* payment of two dollars (\$2) and proof of necessity. *The* license and registration fees shall be paid annually in advance to the *department*. No other or additional license or registration fee *may* be imposed by a municipal corporation or other political subdivision of *this* state for the practice or teaching of cosmetology."

Section 75. Section 66-816, R.C.M. 1947, is amended to read as follows:

"66-816. **Duration and renewal of licenses and certificates — delinquent renewal fee.** (1) Licenses and certificates shall be issued for no longer than one (1) year. *Licenses* and certificates expire on December 31 unless renewed for the next year. Licenses and certificates may be renewed by application made prior to December 31 of each year, and the payment of a required renewal fee. Expired licenses and certificates may be renewed under rules *made* by the board.

(2) In addition to the foregoing requirements for renewal, persons applying for the renewal of teachers' licenses must have fulfilled the following additional requirements:

(a) During *each* year *an* active teacher, either full time or part time, must have successfully completed thirty (30) hours professional teacher training at a school approved by the board as a prerequisite to the renewal of the teacher's license.

(b) Persons holding a teacher's license, but not actively engaged either full time or part time in teaching cosmetology during the preceding year, may renew *the* license by paying the *required* fee.

(c) Persons holding a teacher's license but not actively engaged in teaching cosmetology either full time or part time for the preceding year or longer and wishing to resume active teaching of cosmetology must successfully complete thirty (30) hours professional teachers' training at a school approved by the board before resuming active teachers' training. *However*, the foregoing provisions *do* not prevent the board, under *rules* it *adopts* from permitting a person holding a teacher's license and not actively engaged either full time or part time in teaching cosmetology from teaching as a substitute for an active teacher.

(3) A fee of two dollars and fifty cents (\$2.50) shall be charged in addition to other fees fixed by law for renewal applications of licenses and certificates made after December 31 of each year. *The department* shall notify license holders of *the* expiration date of license not less than thirty (30) days before *the* expiration date, and call attention to *the* penalty imposed for failure to renew license by *the* date of expiration."

Section 76. Section 66-901, R.C.M. 1947, is renumbered 82A-1602.9, and is amended to read as follows:

"82A-1602.9. **Board of dentists — appointment — qualifications — term.** (1) *There is a board of dentists.*

(2) *The board consists of five (5) members appointed by the governor. The Montana state dental association shall present to the governor, within fifteen (15) days after its regular annual meeting, a list of not less than five (5) candidates from which appointments for vacancies on the board occurring during the ensuing year may be made. At all times at least three (3) members of the board shall be appointed from the list of candidates submitted by the Montana state dental association. Each member shall be licensed to practice dentistry in this state and shall have actively practiced dentistry in this state for at least five (5) continuous years immediately before his appointment. Each member shall be a citizen of the United States, and a resident of this state.*

(3) *Each member shall serve for a term of five (5) years. The governor may remove a member only for neglect or cause."*

Section 77. There is a new section to be numbered 66-901.1, R.C.M. 1947, which reads as follows:

66-901.1. **Definitions.** Unless the context requires otherwise, in this act:

(1) "Board" means the board of dentists, provided for in section 82A-1602.9.

(2) "Department" means the department of professional and occupational licensing, provided for in Title 82A, chapter 16.

Section 78. Section 66-904, R.C.M. 1947, is amended to read as follows:

**"66-904. Meetings — notice — quorum — funds — duties — report.** (1) The board shall meet at least once each year in *this* state at the call of the president and secretary-treasurer. Five (5) days' notice must be given by the *department* to board members of the time and place of the meeting of *the* board. Three (3) members of *the* board constitute a quorum for the transaction of business. *Its* proceedings *are* open to public inspection in cases of public interest. *Money collected by the department under this chapter* shall be deposited in the earmarked revenue fund for the use of the board, *subject to section 82A-1603(6).*

(2) *The department shall keep a complete record of meetings and proceedings of the board, and shall keep a complete account of moneys received and disbursements made by the department."*

Section 79. Section 66-905, R.C.M. 1947, is amended to read as follows:

**"66-905. Dentistry examinations — application — contents — fees — undergraduate examination — regulations for examinations — notice — scope of examination — dentist certificates — fee — form — retention and inspection of examination papers.** (1) A person desiring to practice dentistry in *this* state shall file in his full name, an application for examination with the *department* at least twenty (20) days before the date set by the board for the commencement of *the* examination. At the time of making *the* application the applicant shall (a) pay to the *department* a fee of fifty dollars (\$50), furnish the *department* with at

least three (3) affidavits of good moral character *satisfactory to the board*, present to *the department* his diploma or satisfactory evidence of having graduated from a recognized dental school or college, which *has been* approved by *the board*, and furnish the *department* a recent photograph of the applicant.

(2) The board may, in its discretion, permit *a* dental student who *has* successfully completed his junior year in a recognized dental school, and who files proof satisfactory to the board that he has the preliminary education *described* in this section, to take *a* written examination in *the* subjects he has completed, and satisfactory grades secured shall be credited *on* the final examination of *the* student. The board shall require a fee of fifty dollars (\$50) for *this* examination, which shall apply on the final examination taken by *the* applicant.

(3) The board shall *make* rules governing examinations for a license to practice dentistry in *this* state. *The* examinations *are* open to *an* applicant meeting the requirements of this act. *The board* shall also provide, *by rule*, reasonable notice of the time and place where examinations *are* held. An examination shall be held at least once a year.

(4) The examination shall be practical in character and sufficiently thorough to test the fitness of the applicant to practice dentistry. It shall include, written in the English language, questions on anatomy, histology, physiology, chemistry, pharmacology and therapeutics, metallurgy, pathology, bacteriology, anesthesia, operative and surgical dentistry, prosthetic dentistry, prophylaxis, orthodontics and endodontics, and any additional subjects pertaining to dental service. *The* written examination may be supplemented by oral examinations. Demonstrations of the applicant's skill in operative and prosthetic dentistry *is* also required. *The* examination shall be conducted under oath or affirmation *by the department*, *subject to section 82A-1603*, and any member of *the board may* administer the oath or affirmation. The board may recognize a certificate granted by the national board of dental examiners *instead of*, or subject to *the* examinations the board *requires*.

(5) *Applicants* successfully passing *the* examination shall be registered as licensed dentists in the *department* register and, *on* payment of an additional fifteen dollars (\$15) shall receive a certificate signed by the members of *the board*, in *a form prescribed by the board*.

(6) Examination papers of *an* applicant shall be retained two (2) years by the *department* and may then be destroyed, and while so retained *are* open to inspection only by board members, the applicant, some person appointed by *the* applicant to examine *them*, or by a court of competent jurisdiction in a proceeding where the question of the contents of *the* papers is properly involved.

(7) *An* applicant failing to pass his first examination, if otherwise qualified, *may* take subsequent examinations *on* payment of the fee of twenty-five dollars (\$25) for each examination."

Section 80. Section 66-906, R.C.M. 1947, is amended to read as follows:

"66-906. **Certificate to be registered in counties where practicing — replacing lost certificates — admission of dentists from other states — reciprocity — annual license fee — inactive fee — due date of annual fee — revocation of license for failure to pay.** (1) The certificate *under* this act *entitles* the holder to practice dentistry in any county in *this* state, *if the* certificate *is* first filed for registration and registered in the office of the county recorder of the county in which *the* holder desires to practice. *This act does not* permit a holder of a certificate to practice in a county in this state unless *the* certificate *has* been first registered in the office of the recorder of *the* county. A holder of a certificate may practice in more than one (1) or in any number of counties in this state on having *the* certificate registered in each of *the* counties in which *the* holder desires to practice. *The department* shall, *on proof* satisfactory to the board of the loss of a certificate issued under this act, issue a duplicate certificate, and a fee of ten dollars (\$10) shall be charged for issuing *the* certificate.

(2) A dentist who has been lawfully licensed to practice in another state or territory which has and maintains a standard for the practice of dentistry or dental surgery which in the opinion of the board is equal to that at the time maintained in this state; who is a graduate of an accredited four (4) year high school or has actual scholastic credits equivalent to a four (4) year high school course; who is a graduate of a recognized dental school or college; who has been lawfully and continuously engaged in the practice of dentistry for five (5) years or more immediately before filing his application to practice in this state; and who *deposits* in person with the *department* an attested certificate from the examining board of the state or territory in which he is registered or licensed, certifying to the fact of his registration and license and of his being a person of good moral character and of professional attainments, may, *on* the payment of a fee of fifty dollars (\$50) and after satisfactory practical examination demonstrating his proficiency, be granted a license to practice dentistry in this state, without being required to take an examination in theory. *However*, no license *may* be issued without an examination in theory to an applicant, unless the state or territory from which *the* certificate has been granted to *the* applicant *extends* a like privilege to engage in the practice of dentistry to dentists licensed by this state, *who move* to *the* other state. *The* board *may* enter into reciprocal relations with similar boards of other states whose laws are practically identical with this act.

(3) A licensed dentist practicing within *this* state shall *annually* pay before March 1, to the *department*, as a license fee for the year, the sum of ten dollars (\$10). *The* board *may* increase or decrease the annual license fee to maintain in the earmarked fund, at all times, an amount to be known as the emergency fund to be used for the purpose of administering, policing, and enforcing this act. *The* emergency fund *shall* be maintained at an approximate level of two thousand five hundred dollars (\$2,500). Notice of *the* change in the amount of license fees shall be given to each dentist registered in *this* state by the *department*.

(4) *If* a registered dentist absents himself from the state for a period of one (1) or more years, or does not engage in active practice within *this* state, he may continue his license in good standing by the payment of



ten dollars (\$10) each year, or at the discretion of the board, he may be reinstated *on* the payment of a fee of ten dollars (\$10) for each year's absence. *The* annual payments shall be made prior to March 1 *of* each year, and *a* receipt or certificate shall be issued by the *department*.

(5) In case of default in payment of *the* annual license fee by *a* dentist, his license shall be revoked by the board *on* thirty (30) days' notice given to the delinquent of the time and place of considering *the* revocation. A registered letter addressed to the last known address of the party failing to comply with this requirement, as *the* address appears *on* the records of the *department* constitutes sufficient notice of revocation of license, but no license *may* be revoked for nonpayment if the dentist notified *pays* *the* license fee plus *a* late payment penalty of three dollars (\$3) before or at the time fixed for consideration of revocation. The *department* *may* maintain in the name of *this* state a suit to collect license fees and penalties applicable and to recover from the delinquent dentist the cost of *the* action, including reasonable attorneys' fees.

(6) No license fee or tax *may* be imposed on dentists by a municipality or any other subdivision of the state."

Section 81. Section 66-908, R.C.M. 1947, is amended to read as follows:

"66-908. **Failure to register certificate as prima facie proof of lack of authority to practice dentistry.** In *a* prosecution for *a* misdemeanor under this act the certificate of the county recorder of the county *in* which *the* misdemeanor is alleged to have been committed, to the effect that there has been no certificate of the *department*, filed and registered in *the* county recorder's office issued under this act to the person accused of *the* misdemeanor, *is* prima facie proof that *the* person is not entitled to practice dentistry in *the* county."

Section 82. Section 66-909, R.C.M. 1947, is amended to read as follows:

"66-909. **Compensation and expenses allowed board members — limitation on duration of examination meetings — disbursement of funds.** (1) Out of the funds derived from fees and dues *collected under this act* each member of the board shall be reimbursed as follows:

(a) Fifteen dollars (\$15) per day for each day traveling to and from *a* meeting and while in actual attendance at *a* meeting of the board and for each day actually engaged in the duties of his office.

(b) *Expenses* and travel authorized under sections 59-538 and 59-801.

(c) For first class railroad and Pullman fares actually incurred to and from his place of residence to the place of *a* meeting.

(2) Meetings held for the purpose of examining candidates for *a* license to practice dentistry *this state may not* exceed six (6) days.

(3) *Money collected* in excess of expenses and salaries provided for shall be held by the *department* as a special fund for meeting the expenses of the board, the proper administration of this act and for educational pur-

poses *considered* wise by the board. The *department*, on the written request of the board, shall set aside in a separate account in the earmarked revenue fund, the emergency moneys provided under section 66-906. *This account may* be expended only when the board determines that an emergency exists requiring an expenditure therefrom."

Section 83. Section 66-910, R.C.M. 1947, is amended to read as follows:

**"66-910. Practice of dentistry defined — persons conducting business through licensed dentist — exceptions.** (1) A person *is* practicing dentistry *under* this act *if he* performs, attempts, advertises to perform, causes to be performed by the patient or any other person, or instructs in the performance of dental operations, oral surgery, or dental service of any kind gratuitously or for a salary, fee, money, or other remuneration paid, or to be paid, directly or indirectly, to himself, any other person, or agency; is a manager, proprietor, operator, or conductor of a place where dental operations, oral surgery, or dental services are performed; directly or indirectly, by any means or method, furnishes, supplies, constructs, reproduces, or repairs a prosthetic denture, bridge, appliance, or other structure to be worn in the human mouth; places *the* appliance or structure in the human mouth, or attempts to adjust *it*; advertises to the public, by any method, to furnish, supply, construct, reproduce, or repair a prosthetic denture, bridge, appliance, or other structure to be worn in the human mouth; diagnoses, professes to diagnose, prescribes for, professes to prescribe for, treats, or professes to treat disease, pain, deformity, deficiency, injury, or physical condition of human teeth, jaws, or adjacent structure; extracts or attempts to extract human teeth, or corrects, attempts, or professes to correct malpositions of teeth or of the jaw; gives, or professes to give interpretations or readings of dental roentgenograms; administers an anesthetic of any nature in connection with a dental operation; uses the words "dentist," "dental surgeon," "oral surgeon," the letters "D.D.S.," "D.M.D.," or any other words, letters, title, or descriptive matter which in any way represent him as being able to diagnose, treat, prescribe, or operate for any disease, pain, deformity, deficiency, injury, or physical condition of human teeth, jaws, or adjacent structures; states, advertises, or permits to be stated or advertised, by sign, card, circular, handbill, newspaper, radio, or otherwise, that he can perform or will attempt to perform dental operations or render a diagnosis in connection therewith; or engages in any of the practices included in the curricula of recognized dental colleges.

(2) A dental laboratory or dental technician *is* not practicing dentistry *under* this act when engaged in the construction, making, alteration, or repairing of bridges, crowns, dentures, or other prosthetic appliances, surgical appliances, or orthodontic appliances if the casts, models, or impressions *on* which *the* work is constructed have been made by a regularly licensed and practicing dentist, and *the* crowns, bridges, dentures, prosthetic appliances, surgical appliances, or orthodontic appliances *are* returned to the dentist *on* whose order the work was constructed.

(3) A licensed dentist who employs or engages the services of a person, firm, or corporation to construct, reproduce, make, alter, or repair bridges, crowns, dentures, other prosthetic appliances, surgical appliances, or

orthodontic appliances, shall furnish *the* person, firm, or corporation with a written work authorization on forms prescribed by the board which shall contain: (a) the name and address of the person, firm, or corporation to which the work authorization is directed; (b) the patient's name or identification number, but *if* only a number is used the patient's name shall be written *on* the duplicate copy of the work authorization retained by the dentist; (c) the date on which the work authorization was written; (d) a description of the work to be done, including diagrams, if necessary; (e) a specification of the type and quality of the materials to be used; *and* (f) the signature of the dentist and the number of his license to practice dentistry. The person, firm, or corporation receiving a work authorization from a licensed dentist shall retain the original work authorization and the dentist shall retain the duplicate copy for inspection at a reasonable time by the board for a period of two (2) years from date of issuance.

(4) *This section does not apply* to a legally qualified physician or surgeon or to a dental surgeon of the United States army, navy, public health service, or veterans' bureau, or to a legal practitioner of another state making a clinical demonstration before a dental society, convention, or association of dentists, or to a licensed dental hygienist performing *an* act authorized under section 66-921.

(5) No person, firm, or corporation engaged in the business of constructing, altering, or repairing bridges, crowns, dentures, other prosthetic appliances, surgical appliances, or orthodontic appliances *may* advertise *the* services, technique, or materials to the general public by means of advertisements in public newspapers, magazines, or by radio, television, display advertisements, or by any other means *except* advertisements in professional or trade papers, trade journals, trade directories, trade periodicals, trade magazines, and listings in business and telephone directories limited to name, address, and telephone number, which *may* not occupy more than the number of lines necessary to disclose *the* information; nor *may* a person, firm, or corporation so engaged in any way directly solicit the patronage of the general public."

Section 84. Section 66-911, R.C.M. 1947, is amended to read as follows:

**"66-911. Duty of county attorney to enforce act — attorney general's duty on appeal — jurisdiction of justice courts — injunction.** *The* county attorney of *the* county *in which* an offense is alleged to have occurred *shall* attend to the prosecution of complaints made under this act, both *on* trial in the justice court where the complaint *is* made, and also *on* hearing in the district court, either *on the* complaint, or *on* information or indictment filed against *a* person under this act in the district court. *This act does not* prevent the prosecution of *a* person for violation of this act *on the* information of the county attorney directly. Justice courts have original concurrent jurisdiction of misdemeanors committed *under* this act. If *a* person, firm, or corporation engages in the practice of dentistry without possessing a valid license or violates this *chapter*, the attorney general, *a* county attorney, or the board may maintain an action in the name of *this* state to enjoin *the* person, firm, or corporation from engaging in the practice of dentistry or otherwise violating this act. The injunction *does* not relieve criminal prosecution, but the remedy by

injunction *is* in addition to the liability of the offender to criminal prosecution."

Section 85. Section 66-913, R.C.M. 1947, is amended to read as follows:

"66-913. **Revocation or suspension of license — grounds — conviction of crime — renting or loaning license — unprofessional conduct — proceedings for revocation or suspension.** (1) A dentist may have his license revoked or suspended by the board for any of the following reasons:

(a) Conviction of a felony or misdemeanor involving moral turpitude, in which case the record of conviction or a copy certified by the clerk of the court or by the judge in whose court the conviction is had *is* conclusive evidence.

(b) For renting, loaning, or attempting to rent or loan to *a* person his license for the practice of dentistry or his diploma of graduation from a dental college, school, or course to be used as a license or diploma of *the* person.

(c) For permitting *a* dental hygienist, under his personal supervision to do *an* act or perform *an* operation other than those defined and authorized under section 66-921.

(d) For permitting unlicensed auxiliary personnel to perform duties or tasks other than those which may be specifically authorized by the board.

(e) For unprofessional conduct, gross ignorance or inefficiency in his profession, habitual intemperance, or gross immorality.

(2) Unprofessional conduct *consists* of employing what are known as "cappers" or "steerers" to obtain business; obtaining *a* fee by fraud or misrepresentation; willfully betraying professional secrets; employing, directly or indirectly, *a* student or *a* suspended or unlicensed dentist to perform operations in the practice of dentistry, treat lesions of the human teeth or jaws, or correct malimposed formations; making use of advertising statements of a character tending to deceive or mislead the public; advertising prices; advertising professional superiority, or performance of professional services in a superior manner; advertising by means of a large display, glaring light sign, or other sign or device containing the representation of a tooth, teeth, bridgework, or *a* portion of the human head; advertising over television or radio; employing or making use of advertising solicitors or publicity press agents; advertising free dental work or free examination; advertising to guarantee dental service or to perform *a* dental operation painlessly; advertising by sign or printed advertisements under the name of a corporation, company, association, or trade name.

(3) Proceedings under this section may be taken by the board *on* its initial motion, for matters *in* its knowledge, or may be taken *on* the information of another. *However*, if the informant is a member of the board, the other members of *the* board constitute the board for the purpose of determining the truth of the charge or accusation. *Accusations* must be in writing, verified by some party familiar with the facts charged, and

three (3) copies must be filed with the *department*. On receiving the accusation the board shall, if it *considers* the accusation sufficient, make an order setting *it* for hearing, and requiring the accused to appear and answer *the* charge or accusation at *the* hearing.

(4) The accused must appear at the time appointed in the order and answer the charges and make his defense unless for sufficient cause, *on* the accused's application or the board's order, the board *assigns* another day for that purpose.

(5) If the accused does not appear the board may proceed and determine the accusation in his absence. If the accused *confesses* the accusation or *refuses* to answer the charge, or *if on* hearing the board *finds* the charge or accusation true, it may *make* an order either revoking the license of the accused or suspending it for a fixed period. The board and the accused may have the benefit of counsel, and the board shall have the power to administer oaths, take depositions of witnesses in the manner provided by law in civil cases, and to issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents and testimony in any inquiry, investigation, hearing, or proceeding in *this* state. *The* subpoena shall be issued over the signature of the secretary of the board and the seal, and in the name of *this* state.

(6) On revocation or suspension of a license the fact shall be noted on the records of the *department* and the license shall be marked canceled on the date of its revocation, or suspended, as the case may be. The *department* shall, on order of suspension or revocation being entered, transmit to the county recorder *in which* the license of the licensee affected by *the* judgment is registered and recorded, a copy of *the* order, certified by *the* secretary of the board, for record, and *it* shall be registered in the same manner and in the same book *in which* the registration of the certificate to practice dentistry *is kept*."

Section 86. Section 66-919, R.C.M. 1947, is amended to read as follows:

"66-919. **Practicing dentistry without certificate, penalty for—disposition of fines.** A person who, as principal, agent, employer, employee, or assistant, *practices* dentistry, or who *does an* act of dentistry, without having first secured a certificate to practice dentistry from the *department* entitling him to practice in this state, *is* guilty of a misdemeanor, and on conviction in a district court *may* be fined not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000) or be confined for a period not exceeding six (6) months in the county jail. *Fines* imposed and collected under this act shall be paid into the treasury of the county in which *the* suits, actions, or proceedings *are* commenced. *Money* paid into the treasury over and above the amount necessary to reimburse the county for expense incurred by *the* county in a suit, action, or proceeding brought under this *chapter*, shall be *deposited*, before January 1 of each year, in the earmarked revenue fund for the use of the board, *subject to section 82A-1603(6)*."

Section 87. Section 66-920, R.C.M. 1947, is amended to read as follows:

**"66-920. Affiliation with national association authorized — delegate — expenses allowed.** The board may affiliate with the national association as an active member, pay regular annual dues to *the* association, and send a delegate to the meetings of *the* association. *The* delegate shall be reimbursed as follows:

(1) Fifteen dollars (\$15) per day for each day traveling to and from a meeting and while in actual attendance at a meeting;

(2) *Expenses* and travel authorized under sections 59-538 and 59-801; and

(3) *First-class* railroad and Pullman fares actually incurred to and from his place of residence to the place of a meeting."

Section 88. Section 66-921, R.C.M. 1947, is amended to read as follows:

**"66-921. Dental hygiene defined — dental hygienists — qualifications — examination — fee — registration — certificate form — re-examination — powers and limitations — revocation of license.** (1) *The department* may issue to qualified applicants licenses for the practice of dental hygiene to be known as dental hygienists. The practice of dental hygiene is the doing by one person, for a direct or indirect consideration, with respect to the teeth of another person, or *an* act or service, educational, therapeutic, prophylactic, or preventive in nature, as the board, in writing, *defines* and *authorizes*. *However*, this section *does not* allow the board or a licensed dentist to delegate any of the following duties: (a) *diagnosis*, treatment planning and prescription; (b) *surgical* procedures on hard and soft tissues; (c) restorative, prosthetic, orthodontic, and other procedures which require the knowledge and skill of a dentist; (d) *prescription* for drugs, medications, or work authorizations.

(2) A candidate for examination as a dental hygienist shall file in his full name an application for examination with the *department* at least twenty (20) days before the date set by the board for the commencement of *the* examination and at the time of making *the* application shall pay the *department* a fee of twenty dollars (\$20). *The* applicant shall *also* furnish satisfactory proof that he is of good moral character and has earned a diploma or certificate from a school of dental hygiene offering a course of study recognized and approved by the board.

(3) The board shall *make* uniform rules governing the matter of examinations for a license to practice dental hygiene in *this* state, which examinations *are* open to *an* applicant meeting the requirements of this act, and shall also provide in *its* rules for giving reasonable notice of the time and place where examinations *are* held.

(4) The board may recognize a certificate granted by the national board of dental hygiene examiners *instead of an* examination the board *requires*.

(5) *An* applicant who successfully *passes* the examination prescribed by the board shall, on the payment of a fee of fifteen dollars (\$15), be granted a license as a dental hygienist, and shall be registered in a record kept by the *department*, and shall receive a certificate, signed by the members of the board, in a form *prescribed by the board*.

(6) A licensed dental hygienist may practice in the office of a licensed and actively practicing dentist or in a public or private institution or under a board of health or in a public clinic authorized by the board, but *may not practice except under the direct personal supervision of a licensed dentist; however, the dental hygienist may give instruction in dental hygiene without the supervision of a licensed dentist in a public or private institution or under a board of health or in a public clinic authorized by the board.*

(7) *An applicant failing to pass his first examination may, if otherwise qualified, take subsequent examinations on payment of the fee of twenty dollars (\$20) for each examination."*

Section 89. Section 66-922, R.C.M. 1947, is amended to read as follows:

**"66-922. Annual license fee for dental hygienists — revocation of license.** Before March 1 of each year a licensed dental hygienist shall pay to the *department* a license fee of three dollars (\$3), and in default of payment, the board may after hearing and on thirty (30) days' notice revoke the license of the hygienist in default; but the payment of the fee on or before the time of hearing, with an additional sum fixed by the board, not exceeding three dollars (\$3), *excuses* the default. The *department* may collect the fee by suit. *The board may likewise revoke or suspend the license of a dental hygienist for violating this act."*

Section 90. Section 66-923, R.C.M. 1947, is amended to read as follows:

**"66-923. Admission of dental hygienists from other states — unlawful to practice without license — licenses for practicing hygienists — reciprocity.** (1) A dental hygienist:

(a) *Who* has been lawfully licensed to practice in another state or territory which has and maintains a standard for the practice of dental hygiene which, in the opinion of the board, is equal to that at the time maintained in this state,

(b) *Who* has been lawfully and continuously engaged in the practice of dental hygiene for a period of one (1) year or more immediately before filing his application to practice in this state, and

(c) *Who deposits* in person with the *department* an attested certificate from the examining board of the state or territory in which he is registered or licensed, certifying to the fact of his registration and license and of his being a person of good moral character and of professional attainments; may on the payment of a fee of twenty dollars (\$20) and after satisfactory practical examination demonstrating his proficiency, be granted a license to practice dental hygiene in this state without being required to take an examination in theory. *Except* as provided in *subsection* (2) of this section, no license may be issued without an examination in theory to the applicant, unless the state or territory from which the certificate has been granted *extends* a like privilege to engage in the practice of dental hygiene to dental hygienists licensed by this state, and *who have moved to the* other state.

(2) A dental hygienist who has been lawfully licensed to practice in another state or territory not having reciprocity with *this* state but which has and maintains a standard for the practice of dental hygiene which, in the opinion of the board, is equal to that at the time maintained in this state, and who *deposits* in person with the *department*, an attested certificate from the examining board of the state or territory in which he is registered or licensed, certifying to the fact of his registration and license and his being a person of good moral character and of professional attainment may, *on* the payment of a fee of twenty dollars (\$20), be granted a temporary license authorizing *the* person to practice dental hygiene from the time of the granting of *the* license until the time of the next regular examination for dental hygiene set by the board. No additional fee for *the* examination *may* be charged.

(3) Except as provided in subsections (1) and (2) of this section no person *may* engage in the practice of dental hygiene or practice as a dental hygienist in this state until *he* has passed an examination approved by the board under rules it *considers* proper and has been issued a license by the *department*.

(4) The board *may* enter into reciprocity agreements with other states or territories, the standards of which as to the practice of dental hygiene, are, in the opinion of the board, equal to those of this state.

(5) Nothing in this act relating to the practice of dental hygiene *applies* to *its* practice by a licensed dentist or a licensed physician and surgeon in *this* state."

Section 91. Section 66-1012, R.C.M. 1947, is amended to read as follows:

**"66-1012. Practice of medicine defined — exemptions from licensing requirements.** (1) *Unless the context requires otherwise in this act:*

(a) *"Practice of medicine" means the diagnosis, treatment, or correction of, or the attempt to, or the holding of oneself out as being able to diagnose, treat, or correct human conditions, ailments, diseases, injuries, or infirmities, whether physical or mental, by any means, method, devices, or instrumentalities. If a person who does not possess a license to practice medicine in this state, under this act, and who is not exempt from the licensing requirements of this act, performs acts constituting the practice of medicine, he is practicing medicine in violation of this act.*

(b) *"Board" means the Montana state board of medical examiners, provided for in section 82A-1602.15.*

(c) *"Department" means the department of professional and occupational licensing, provided for in Title 82A, chapter 16.*

(2) *This act does not prohibit or require a license with respect to any of the following acts:*

(a) *The gratuitous rendering of services in cases of emergency or catastrophe;*

(b) *The rendering of services in this state by a physician lawfully prac-*



ticing medicine in another state or territory; *however*, if *the* physician does not limit *the* services to an occasional case, or if he has any established or regularly used hospital connections in this state, or maintains or is provided with, for his regular use, *an* office or other place for rendering *the* services, he must possess a license to practice medicine in this state;

(c) *The* practice of dentistry under the conditions and limitations defined by the laws of this state;

(d) *The* practice of *podiatry* under the conditions and limitations defined by the laws of this state;

(e) *The* practice of optometry under the conditions and limitations defined by the laws of this state;

(f) *The* practice of osteopathy under the conditions and limitations defined in sections 66-1401.1 to 66-1413, as amended, for those doctors of osteopathy who do not receive a physician's certificate under this act;

(g) *The* practice of chiropractic under the conditions and limitations defined by the laws of this state;

(h) *The* practice of Christian Science, with or without compensation; and ritual circumcisions by rabbis;

(i) *The* performance by commissioned medical officers of the armed forces of the United States or of the United States public health service or of the United States veterans administration of their lawful duties in this state as officers;

(j) *The* rendering of nursing services by registered or other nurses in the lawful discharge of their duties as *nurses*;

(k) *The* rendering of services by interns or resident physicians in a hospital or clinic in which they are training, subject to the conditions and limitations of this act;

(l) *The* rendering of services by a physical therapist, technician, or other paramedical specialist, under the personal and responsible direction and supervision of a person licensed under the laws of this state to practice medicine, but this exemption *does not* extend the scope of a paramedical specialist; and

(m) *The* practice by persons licensed under *the laws* of this state to practice a limited field of the healing arts and not specifically designated, under the conditions and limitations defined by law.

(3) *Licensees* referred to in subsection (2) of this section, who are licensed to practice a limited field of healing arts, shall confine themselves to the field for which they are licensed or registered and to the scope of their respective licenses, and *may not* use the title M.D., or any word or abbreviation to indicate, or to induce others to believe that *they are* engaged in the diagnosis or treatment of persons afflicted with disease, injury, or defect of body or mind except to the extent and under the conditions expressly provided by the law under which they are licensed."

Section 92. Section 66-1013, R.C.M. 1947, is renumbered 82A-1602.15, and is amended to read as follows:

**"82A-1602.15. Montana state board of medical examiners — appointment — qualifications — term — removal.** (1) *There is a Montana state board of medical examiners.*

(2) *The board consists of seven (7) members appointed by the governor, with the consent of the senate. Appointments made when the senate is not in session may be confirmed at the next senate session. The members are: six (6) members having the degree of doctor of medicine, and one (1) member having the degree of doctor of osteopathy. The members having the degree of doctor of medicine may not be from the same county. Each member shall be a citizen of the United States. Each member shall have been licensed and shall have practiced medicine in this state for at least five (5) years, and shall have been a resident of this state for at least five (5) years.*

(3) *Each member shall serve for a term of seven (7) years. A term commences on September 1 of each year of appointment. A member may, upon notice and hearing, be removed by the governor for neglect of duty, incompetence, or unprofessional or dishonorable conduct."*

Section 93. Section 66-1015, R.C.M. 1947, is amended to read as follows:

**"66-1015. Organization.** The board shall, at the first meeting each year, elect from among its members a president, vice-president, and secretary. The board shall adopt a seal, in which appears the words "The Board of Medical Examiners of Montana" and the further words "Official Seal" and acts, rules, orders, certificates, and licenses shall be authenticated by the seal."

Section 94. Section 66-1017, R.C.M. 1947, is amended to read as follows:

**"66-1017. Powers and duties of board.** (1) *The board may:*

(a) *Adopt rules necessary or proper to carry out this act. The rules shall be fair, impartial, and nondiscriminatory.*

(b) *Hold hearings and take evidence in matters relating to the exercise and performance of the powers and duties vested in the board.*

(c) *Aid the county attorneys of this state in the enforcement of this act and the prosecution of persons, firms, associations, or corporations charged with violations of this act.*

(2) *A person hired by the department to assist it and the board in investigations, the authorization of temporary certificates, professional correspondence, and related matters shall be approved by the board."*

Section 95. Section 66-1018, R.C.M. 1947, is amended to read as follows:

**"66-1018. Meetings.** The board shall hold meetings for examinations, and for other business properly before the board at least twice annually at times and places set by the board. *The president of the board may call special meetings he considers advisable or necessary. Four (4) members of the board constitute a quorum."*

Section 96. Section 66-1019, R.C.M. 1947, is amended to read as follows:

"66-1019. **Records.** The *department* shall keep a record of the *board's* proceedings, and also records of applicants for a certificate and a register of licenses. The register is *prima facie* evidence of the matters *contained in it.*"

Section 97. Section 66-1020, R.C.M. 1947, is amended to read as follows:

"66-1020. **Compensation of members.** Each member of the board shall receive twenty-five dollars (\$25) per diem, and mileage *as provided in section 59-801* while in the active and necessary discharge of his duties."

Section 98. Section 66-1021, R.C.M. 1947, is amended to read as follows:

"66-1021. **Kinds of certificates — issuance — reciprocity certificates and certificates by endorsement — renewal.** The *department* may issue two (2) forms of certificates under *the board's* seal: the physician's certificate and the temporary certificate. The physician's certificate shall be signed by the president, but the temporary certificate may be signed by any board member. The board shall decide which certificate to issue. These certificates shall be designated as:

- (1) *Physician's* certificate, which is subject to annual registration;
- (2) *Temporary* certificate, which is subject to specifications and limitations imposed by the board."

Section 99. Section 66-1025, R.C.M. 1947, is amended to read as follows:

"66-1025. **Qualifications for licensure — physician's certificates, reciprocity and endorsement.** (1) *The board may authorize the department to issue to an applicant* a physician's certificate, certificate by reciprocity, or certificate by endorsement only *on the basis of:*

(a) *Passing* an examination given and graded by the *department*, subject to section 82A-1603;

(b) *Certification* of record or other certificate of examination issued to or for the applicant by the National Board of Medical Examiners, or successors, or by the Federation Licensing Examination Committee, or successors, certifying that the applicant has passed an examination given by *this* board; or

(c) A valid, unsuspended, and unrevoked license or certificate issued to the applicant on the basis of an examination by *an* examining board under the laws of *another* state or territory of the United States or of the District of Columbia or of *a* foreign country whose licensing standards at the time *the* license or certificate was issued were, in the judgment of the board, essentially equivalent to those of *this* state for granting a license to practice medicine, *if under the scope of the license or certificate the applicant was authorized to practice medicine in the other state, territory, or country.*

(2) *No applicant who applies for a license on the basis of an examination and fails the examination may be granted a license based on credentials from another state, territory, or foreign country, or on a certificate issued by the National Board of Medical Examiners, or successors, or by the Federation Licensing Examination Committee or successors.*

(3) *The board may adopt reciprocity or endorsement requirements current with changes in standards in the practice of medicine.*

(4) *The board may, in the case of an applicant for admission by reciprocity or endorsement, require a written or oral examination of the applicant.*

(5) *The board may require that graduates of foreign medical schools pass an examination given by the Education Council for Foreign Medical Graduates, or successors.*

(6) *Holders of the degree of doctor of osteopathy granted in 1955 or before will be certified only on the basis of taking and passing the examination given by the department, subject to section 82A-1603. Holders of the degree of doctor of osteopathy granted after 1955 will be certified in the same manner as provided above for physicians."*

Section 100. Section 66-1026, R.C.M. 1947, is amended to read as follows:

**"66-1026. Qualifications for licensure — temporary certificate.** *The board may authorize the department to issue to an applicant a temporary certificate to practice medicine on the basis of:*

(1) *Passing an examination given and graded by the department, subject to section 82A-1603; or*

(2) *Certification of record or other certificate of examination issued to or for the applicant by the National Board of Medical Examiners or successors, or by the Federation Licensing Examination Committee, or successors, certifying that the applicant has passed an examination given by the board; or*

(3) *A valid, unsuspended, and unrevoked license or certificate issued to the applicant, on the basis of an examination by an examining board under the laws of another state or territory of the United States or of the District of Columbia or of a foreign country whose licensing standards at the time the license or certificate was issued were essentially equivalent, in the judgment of the board, to those of this state at the time for granting a license to practice medicine; and*

(4) *Being a graduate of an approved medical school who has completed one (1) year of internship, or its equivalent, and being of good moral character and good conduct; and*

(5) *The board may require that graduates of foreign medical schools pass the examination given by the Education Council for Foreign Medical Graduates, or successors."*

Section 101. Section 66-1027, R.C.M. 1947, is amended to read as follows:

"66-1027. **Qualifications for licensure — limitations.** (1) No person *may* be granted a physician's certificate to practice medicine in *this* state unless he:

- (a) *Is* a citizen of the United States;
- (b) *Is* of good moral character, as determined by the board;
- (c) *Is* a graduate of an approved medical school as defined in section 66-1028;

(d) *Has* completed an approved internship of at least one (1) year or, in the opinion of the board, has had experience or training which is at least the equivalent of one (1) year internship; *and*

(e) *Has* made a personal appearance before the board. The board may *authorize the department to issue the* license subject to terms of probation or other conditions or limitations set by the board, *or* may refuse a license if *the applicant* has committed unprofessional conduct or is otherwise unqualified.

(2) No person *may* be granted a temporary license to practice medicine in *this* state unless he:

(a) *Is* a citizen of the United States, or has filed a properly executed declaration of intention to become a citizen of the United States;

(b) *Is* of good moral character, as determined by the board;

(c) *Is* a graduate of an approved medical school as defined in section 66-1028;

(d) *Has* completed an approved internship of at least one (1) year or, in the opinion of the board, has had experience or training which is at least the equivalent of one (1) year internship; *and*

(e) *Has* made a personal appearance before at least one (1) member of the board.

(3) A temporary license may be issued to a physician employed by a public institution who is practicing under the direction of a licensed physician. The board may *authorize the department to issue a* temporary license subject to terms of probation or other conditions or limitations set by the board, or may refuse a *temporary* license to a person if he has committed unprofessional conduct. The issuance of a temporary certificate imposes no future obligation or duty on the part of the board to grant full licensure or to renew or extend the temporary license. *The board may, in the case of an applicant for a temporary certificate, require a written, oral, or practical examination of the applicant."*

Section 102. Section 66-1028, R.C.M. 1947, is amended to read as follows:

"66-1028. **Approved medical school.** An approved medical school is a school which either is accredited by the American Osteopathic Association or conforms to the minimum education standards established by the Council on Medical Education of the American Medical Association, or successors, for medical schools, or is equivalent in the sound discretion

of the board. *The board may, on investigation of the educational standards and facilities, approve any medical school, including foreign medical schools.*"

Section 103. Section 66-1032, R.C.M. 1947, is amended to read as follows:

"66-1032. **Application for license.** (1) A person desiring a license to practice medicine shall make application to the *department*, verified by oath and in a form prescribed by the board. *The application shall be accompanied by the license fee and documents, affidavits, and certificates necessary to establish that the applicant possesses the qualifications prescribed by this act, apart from an examination required by the board. The burden of proof is on the applicant, but the board may make an independent investigation to determine whether the applicant possesses the qualifications and whether the applicant has committed unprofessional conduct. At the board's request, the applicant shall provide necessary authorizations for the release of records and information pertinent to the board's information.*

(2) An applicant for a license on the basis of an examination shall file his application at least thirty (30) days prior to the announced date of the examination. If *the applicant is not at the time of filing his application a graduate of, but is then in attendance at, an approved medical school, he shall submit to the department, instead of a diploma or other required evidence of graduation, a written statement from the dean or other authorized representative of the approved medical school that the applicant will receive his diploma at the end of the then current school term. The applicant may not be granted a certificate until he has filed with the department his diploma or other acceptable evidence of graduation from the approved medical school, and has complied with the requirements of subsection (1) of this section, and no license may be issued to him until he has satisfied the board that he has completed at least one (1) year of an approved internship, or its equivalent, and has otherwise met the requirements for the issuance of a license under this act.*"

Section 104. Section 66-1033, R.C.M. 1947, is amended to read as follows:

"66-1033. **Examination.** (1) Examinations for a license to practice medicine shall be held not less than twice each year, at a time and place specified by the board. The examination shall be conducted in the English language, and shall be sufficiently comprehensive in medicine to adequately test the applicant's professional competence and ability. The examination shall be fair and impartial. Examination papers *may not disclose the name of an applicant but shall be identified by a number assigned by the department. The board may require the department to use the examination prepared by the National Board of Medical Examiners, or the examination prepared by the Federation Licensing Examination Committee, or successors.*

(2) The board may, in its discretion, *require the department to give subject to section 82A-1603, an oral or practical examination to test the applicant's qualifications for licensure, and grant appropriate credit for this.*

(3) The board may use other Montana physicians to assist in preparing the examination.

(4) A person *may not* be granted a license to practice medicine if he fails to attain an average grade of at least seventy-five percent (75%). If an applicant fails to meet the minimum grade requirements in his first examination, he may, after not less than six (6) months nor more than twelve (12) months, be re-examined without an additional fee. He may take one (1) additional examination, but not less than one (1) year after the date of the last preceding examination and he *is* required to pay a fee of fifty dollars (\$50) for the additional examination. *If an applicant is prevented through no fault of his own from taking a scheduled examination he may, within two (2) years, be examined without payment of another fee or submission of a new application."*

Section 105. Section 66-1034 R.C.M. 1947, is amended to read as follows:

"66-1034. **Issuance of license — prior practice prohibited.** If the board determines that an applicant possesses the qualifications required by this act, the *department* shall issue a license to practice medicine which shall be signed by the president or vice-president, attested by the secretary, and sealed with the seal of the board. *Prior to the issuance of a license, the applicant may not engage in the practice of medicine in this state."*

Section 106. Section 66-1036, R.C.M. 1947, is amended to read as follows:

"66-1036. **Refusal of license.** If the board *determines* that an applicant for a license to practice medicine does not possess the qualifications or character required by this act or that he has committed unprofessional conduct, it shall refrain from *authorizing the department to issue* a license. *The department* shall mail to the applicant, at his last address of record with the *department*, written notification of *the board's* decision together with notice of a time and place of a *hearing* before the board. *If the applicant without cause fails to appear at the hearing, or if after hearing, the board determines he is not entitled to a license, the board shall refuse to grant the license."*

Section 107. Section 66-1037, R.C.M. 1947, is amended to read as follows:

"66-1037. **Unprofessional conduct.** *As used in this act "unprofessional conduct" means:*

(1) *Resorting* to fraud, misrepresentation, or deception in applying for or in securing a license or in taking the examination provided for in this act;

(2) *Performing* abortion contrary to law;

(3) *Obtaining* a fee or other compensation, either directly or indirectly, by the misrepresentation that a manifestly incurable disease, injury, or condition of a person can be cured;

(4) *Willful* disobedience of the rules of the board;

(5) *Conviction of an offense involving moral turpitude, or the conviction of a felony involving moral turpitude, and the judgment of the conviction, unless pending on appeal, is conclusive evidence of unprofessional conduct;*

(6) *Administering, dispensing, or prescribing a narcotic or hallucinatory drug, as defined by the federal food and drug administration, or successors, otherwise than in the course of legitimate or reputable professional practice;*

(7) *Conviction or violation of a federal or state law regulating the possession, distribution, or use of a narcotic or hallucinatory drug as defined by the federal food and drug administration; and the judgment or conviction, unless pending on appeal, is conclusive evidence of unprofessional conduct;*

(8) *Habitual intemperance or excessive use of narcotic drugs, alcohol, or of any other drug or substance to the extent that the use impairs the user physically or mentally;*

(9) *Conduct unbecoming a person licensed to practice medicine or detrimental to the best interests of the public;*

(10) *Resorting to fraud, misrepresentation or deception in the examination or treatment of a person, or in billing or reporting to a person, company, institution, or organization;*

(11) *Testifying in court on a contingency basis;*

(12) *Conspiring to misrepresent or willfully misrepresenting, medical conditions improperly to increase or decrease a settlement, award, verdict, or judgment;*

(13) *Aiding or abetting, in the practice of medicine, a person not licensed to practice medicine or a person whose license to practice medicine is suspended;*

(14) *Gross malpractice, or negligent practice;*

(15) *Practicing medicine as the partner, agent, or employee of, or in joint venture with, a person who does not hold a license to practice medicine within this state; however, this does not prohibit the incorporation of an individual licensee or group of licensees as a professional service corporation under Title 15, chapter 21, nor does this apply to a single consultation with or a single treatment by a person or persons licensed to practice medicine and surgery in another state or territory of the United States or foreign country;*

(16) *Violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate this act or the rules authorized by it; or*

(17) *Any other act, whether specifically enumerated or not, which, in fact, constitutes unprofessional conduct."*

Section 108. Section 66-1038, R.C.M. 1947, is amended to read as follows:



"66-1038. **Revocation or suspension of license — probation.** (1) The board may, *when* it has been brought to its attention that there is reason to suspect that *a* person having a license or certificate to practice medicine in this state:

(a) *Is* mentally or physically unable, safely, to engage in the practice of medicine, or has procured his license to practice medicine by fraud or misrepresentation or through mistake, or has been declared incompetent by a court of competent jurisdiction and thereafter has not been lawfully declared competent, or when a condition exists which impairs his intellect or judgment to *the* extent *that it incapacitates* him for the safe performance of professional duties;

(b) *Has* been guilty of unprofessional conduct;

(c) *Has* practiced medicine while his license was suspended or revoked;  
or

(d) *His*, while under probation, violated *its* terms; make an investigation, including requiring *the* person to submit to a physical examination or a mental examination or both by a physician or physicians selected by the board *when it appears* in the best interests of the public that *this* evaluation be secured, to determine the probability of the existence of *these* conditions or the commission of *these* offenses. The board may examine and scrutinize the hospital records and reports of *a* licensee as part of *the* examination and copies of *these* shall be released to the board on written request. If the board has reasonable cause to believe that *this* probability exists, the *department* shall mail to *the* person, at his last address of record with the *department*, a specification of the charges against him, together with a written citation of the time and place of *the* hearing *on it*, advising him that he may be present in person, and by counsel if he so desires, to offer evidence and be heard in his defense. *The* time fixed for *the* hearing shall not be less than thirty (30) days from the date of mailing the notice.

(2) *A* person, including *a* member of the board, may file a sworn complaint with the *department* against *a* person having a license to practice medicine in this state, charging him with the commission of any of the offenses set forth in section 66-1037, or subsection one (1) of this section, which complaint shall set forth a specification of the charges. When *the* complaint is filed, the *department* shall mail a copy to the person accused, at his last address of record with the *department*, together with a written citation of the time and place of *the* hearing *on it*.

(3) At the hearing the board shall adopt a resolution finding him guilty or not guilty of the matters charged. If the board finds that the conditions referred to in section 66-1037, or subsection (1) of this section do not exist with *respect* to *the* person or if he *is* found not guilty, the board shall dismiss the charges or complaint, but if the board does find that the conditions referred to in section 66-1037 or in subsection (1) of this section do exist and *the* person *is* found guilty, the board shall:

(a) *Revoke* his license;

(b) *Suspend* his right to practice for a period not exceeding one (1) year;

(c) *Suspend* its judgment of revocation *on* the terms and conditions to be determined by the board;

(d) *Place* him *on* probation; or

(e) *Take any* other action in relation to disciplining him as the board in its discretion *considers* proper.

(4) The *department* in cases of revocation, suspension, or probation shall enter in its records the facts of *the* action, and of subsequent action of the board with respect to *it*.

(5) *On* the expiration of the term of suspension, the licensee shall be reinstated by the board, *if he furnishes* the board with evidence that he is then of good moral character and conduct and restored to good health and that he has not practiced medicine in this state during the term of suspension. If *the* evidence fails to establish to the satisfaction of the board that the holder is then of good moral character and conduct or if not restored to good health or if *the* evidence shows he has practiced medicine in this state during the term of suspension, the board shall revoke the license at a hearing, *with* notice and the procedure provided *in subsection (1) of this section*. The revocation is final and absolute.

(6) *If a* person holding a license to practice medicine under this act *is*, by a final order or adjudication of a court of competent jurisdiction, adjudged to be mentally incompetent or insane, or addicted to the use of narcotics, his license may be suspended by the board. *The suspension continues* until the licensee is found or adjudged by *the* court to be restored to reason or cured, or until he is discharged as restored to reason or cured and his professional competence has been proven to the satisfaction of the board."

Section 109. Section 66-1041, R.C.M. 1947, is amended to read as follows:

"66-1041. **Violations — penalties.** (1) A person practicing medicine *in this* state without complying with this act, or *an* association or corporation (except a professional service corporation *under Title 15, chapter 21*) practicing medicine *in this* state, or a person, association, or corporation violating this act or *an* officer or director of *an* association or corporation *violating this act*, *is* guilty of a misdemeanor, and *on* conviction, shall be *finned* not less than two hundred fifty dollars (\$250) or more than one thousand dollars (\$1,000) or *imprisoned* in the county jail for not less than ninety (90) days or more than one (1) year, or both. *Each* daily failure to comply with, or each daily violation of this act, *constitutes* a separate offense.

(2) A person presenting, or attempting to file as his own, the diploma, license, certificate, or credentials of another, or who *gives* false or forged evidence to the board, *a member of the board, or the department*, in connection with an application for a license to practice medicine, or who *practices* medicine under a false or assumed name, or who falsely *imersonates* another licensee, *is* guilty of a felony, and *on* conviction shall be *imprisoned* in the state penitentiary for a term of not less than one (1) year or more than ten (10) years."

Section 110. Section 66-1042, R.C.M. 1947, is amended to read as follows:

**"66-1042. Annual registration fees — limiting authority to impose registration fees.** (1) In addition to the license fees required of applicants, a licensed physician actively practicing medicine *in this state* shall pay each year to the *department*, an annual registration fee, not to exceed the sum of twenty-five dollars (\$25), as prescribed by the board and approved by the *department of administration*. If a person licensed to practice medicine absents himself from the state for a period of one (1) or more years, or does not engage in active practice *in this state*, he may continue his license in good standing by the payment of five dollars (\$5) each year, or at the discretion of the board, he may be reinstated *on* the payment of a fee of five dollars (\$5) for each year of absence or inactive practice.

(2) *The* annual payments for registration shall be made prior to April 1, and a receipt acknowledging payment of the annual registration fee shall be issued by the *department*. The *department* shall mail registration notices, at least sixty (60) days before *the* registration is due. In case of default in the payment of the annual registration fee by a person licensed to practice medicine who is actively practicing medicine *in this state*, his underlying certificate to practice medicine may be revoked by the board *on* thirty (30) days' notice given to the delinquent of the time and place of considering *the* revocation. A registered or certified letter addressed to the last known address of the person failing to comply with the requirements of annual registration, as *the* address appears *on* the records of the *department*, constitutes sufficient notice of intention to revoke his underlying certificate. No certificate *may* be revoked for nonpayment if the person authorized to practice medicine, and notified, *pays the* annual registration fee before or at the time fixed for consideration of revocation together with a delinquency penalty of ten dollars (\$10). *The department* may collect *the* dues by an action at law.

(3) No registration or license fee *may* be imposed *on* a licensee under this act by a municipality or any other subdivision of the state."

Section 111. Section 66-1043, R.C.M. 1947, is amended to read as follows:

**"66-1043. Disposition of money received.** Money received *under this act* by *the department* shall be deposited in the earmarked revenue fund for the use of the board, *subject to section 82A-1603(6)*. In the case of a deficiency the reserves *in this account* in the earmarked revenue fund may be used *on* approval by the *department of administration* and the governor."

Section 112. Section 66-1045, R.C.M. 1947, is amended to read as follows:

**"66-1045. Injunctive relief — manner of charging violation of act.** The board, notwithstanding any other provision in this act, may maintain an action to enjoin a person from engaging in the practice of medicine, until a license to practice medicine *is* procured. A person who has been enjoined *and* who *violates the* injunction *is punishable* for contempt of

court. *The injunction does not relieve the person practicing medicine without a license from a criminal prosecution. The remedy by injunction is in addition to remedies provided for the criminal prosecution of the offender. In charging a person in a complaint for injunction or in an affidavit, information, or indictment with a violation of this law by practicing medicine without a license, it is sufficient to charge that he did, on a certain day and in a certain county, engage in the practice of medicine, not having a license to do so, without averring further or more particular facts concerning the violation.*"

Section 113. Section 66-1048, R.C.M. 1947, is amended to read as follows:

**"66-1048. Notice of change of address or name.** *When a person applies for a license of any type to practice medicine in this state the person shall designate in his application his correct and official address to which the department shall send communications, notices, orders, citations, or other process, if any, affecting him. If the person changes his address, or when the name of a licensee is changed by marriage or otherwise, the person shall within thirty (30) days notify the department in writing of his old and new address or of the former name and new name. This information shall be entered promptly by the department in the official records of the department. A person licensed to practice medicine in this state shall keep the department advised at all times of his correct mailing address and of his correct name.*"

Section 114. Section 66-1222, R.C.M. 1947, is amended to read as follows:

**"66-1222. Definitions — identification of board when administering act for professional nursing and for practical nursing.** *Unless the context requires otherwise, in this act:*

(1) *"Board" means the board of nursing, provided for in section 82A-1602.18 with dual functions in the field of professional nursing and practical nursing. In matters relating to professional nursing the board consists of five (5) members. In matters relating to practical nursing the board consists of eight (8) members. The board of five (5) members may for convenience be referred to as the board followed by the words "professional nursing administration," and the board of eight (8) members may, for convenience, be referred to as the board followed by the words "practical nursing administration."*

(2) *"Department" means the department of professional and occupational licensing, provided for in Title 82A, chapter 16.*

(3) *"Practice of nursing" embraces two (a) classes of nursing service and activity, as follows:*

(a) *"Practice of professional nursing" means the performance for compensation of an act in the observation, care, and counsel of the ill, injured, or infirm, or in the maintenance of health, or prevention of illness of others, or in the supervision and teaching of other personnel, or the administration of medications and treatments prescribed by a person licensed in this state to prescribe medications and treatments; requiring*

substantial specialized judgment and skill and based on knowledge and application of the principles of biological, physical, and social science. The *term does* not include acts of diagnosis or prescription of therapeutic or corrective measures.

(b) "*Practice of practical nursing*" means the performance for compensation in the care of the ill, injured, or infirm, of acts selected by and performed under the direction of *a registered professional nurse*, or a person licensed in this state to prescribe medications and treatments; and not requiring the substantial specialized skill, judgment, and knowledge required in professional nursing."

Section 115. Section 66-1223, R.C.M. 1947, is amended to read as follows:

"66-1223. **Seal—board records public—legal counsel.** (1) The board shall have a seal which shall be used to authenticate its acts under each administration. The seal shall have inscribed the words "*Board of Nursing*" — "*Official Seal*" and *a* device or legend designated by the board.

(2) The records and files of the board *kept by the department* are at all times open to public inspection.

(3) The attorney general *is* the attorney and legal counsel for the board; but the *department* may, with the approval of the attorney general, appoint additional legal counsel to assist *the board and department* in the administration and enforcement of *this act*."

Section 116. Section 66-1225, R.C.M. 1947, is amended to read as follows:

"66-1225. **Organization — duties and powers — separation of records responsive to functions of board — dual administrations to be exclusive of each other.** (1) The board — practical nursing administration, shall meet annually in the month of July and shall elect from among the eight (8) members a president and a secretary, each of whom *is* a professional nurse. The board — practical nursing administration, shall hold other meetings *when* necessary to transact its business. The board — professional nursing administration, shall meet annually in July and shall hold other meetings *when* necessary to transact its business. A majority of the board, as separately constituted for each administration, including in *the* majority at least one officer of the board, *constitutes* a quorum at any meeting; *however*, when sitting as the practical nursing administration, a quorum *consists* of a minimum of two (2) practical nurse members and three (3) professional nurse members, including one board officer. The *department* shall keep separate and complete minutes and records of the respective administration meetings and rules and orders promulgated by each administration *of the board*, and each administration shall exercise its functions, powers, and duties exclusive of the other, except for the identity and membership *provided* in this act.

(2) The board under each administration *may make* rules necessary to enable the respective administrations to *administer* this act. The board under each administration shall prescribe curricula and standards for

schools and courses preparing persons for registration and licensure under this act. It shall provide for surveys of schools and courses at times it *considers* necessary. It shall approve schools and courses *that* meet the requirements of this act and of the board. It shall evaluate and approve courses for affiliation of student nurses. *The department shall, subject to section 82A-1603, examine, issue to, and renew licenses of qualified applicants. The board shall conduct hearings on charges calling for discipline of a licensee, revocation of a license, or removal of schools of nursing from the approved list. It shall cause the prosecution of persons violating this act and may incur necessary expenses for this.*

(3) The board under each administration *may* adopt and *the department shall* publish forms for use by applicants and others, including license, certificate, and identity forms, and other appropriate forms and publications convenient for the proper administration of this act, and *the board may* fix reasonable fees for incidental services, all within the subject matter delegated to each administration by this act. *Forms shall make clear reference to the administration for which the form is intended.*

(4) *Unless the context requires otherwise, the powers and duties enumerated in this act shall be exercised and performed by the board — professional nursing administration, in all matters relating to professional nurses or professional nursing education, and shall be exercised and performed by the board inclusive of the practical nursing administration in all matters relating to practical nurses and practical nursing education. The officers of the board shall also be the officers of the board inclusive of the practical nursing administration."*

Section 117. Section 66-1226, R.C.M. 1947, is amended to read as follows:

"66-1226. **Reimbursement for expenses — compensation.** Each member of the board shall be paid *mileage as provided in section 59-801 and actual and necessary expenses, and in addition, fifteen dollars (\$15) per day for each day actually engaged in the discharge of duties under this act, including the time spent in actual attendance at a meeting of the board and in direct travel to and from meetings, and a reasonable number of days for the preparation and administration of examinations.*"

Section 118. Section 66-1227, R.C.M. 1947, is amended to read as follows:

"66-1227. **Qualifications of applicants for license to practice professional nursing.** An applicant for a license to practice as a registered professional nurse shall submit to the *department* written evidence, verified by oath, that *the* applicant:

(1) Has successfully completed at least an approved four (4) year high school course of study or the equivalent as determined by the *office of the superintendent of public instruction*;

(2) Has completed the basic professional curriculum in an approved school of nursing and holds a diploma therefrom; *and*

(3) *Meets* other qualification requirements the board, *acting under the professional nursing administration, prescribes."*

Section 119. Section 66-1228, R.C.M. 1947, is amended to read as follows:

**"66-1228. License — by examination — by endorsement without examination — license fees.** (1) *An applicant for a license to practice professional nursing is required to pass a written examination in subjects the board, acting under the professional nursing administration, determines. A written examination may be supplemented by an oral or practical examination. On successfully passing the examination, the department shall issue to the applicant a license to practice nursing as a registered professional nurse. The applicant shall pay a fee of twenty-five dollars (\$25) at the time the application is submitted, which shall be returned to the applicant if the application is withdrawn not later than five (5) days prior to the date of examination, or if the examination is not taken, subject to deduction by the department of one dollar (\$1) per subject of the examination which shall be retained by the department.*

(2) *The board — professional nursing administration, may issue a license to practice nursing as a registered professional nurse without examination, to an applicant who has been licensed or registered as a professional nurse under the laws of another state, territory, or country, if in the opinion of the board the applicant meets the qualifications required of registered nurses in this state at the time the applicant graduated from a school of nursing. The applicant shall pay a fee of twenty-five dollars (\$25) at the time the application is submitted, which shall be returned to the applicant if the application is withdrawn not later than five (5) days prior to final submission of the application to the board, subject to deduction of five dollars (\$5), to be retained by the department.*

(3) *An applicant may, pending application for a professional nursing license under subsections (2) of this section, practice professional nursing as an employee of a physician, or in a hospital or public health agency for a period not longer than three (3) months from the date the department acknowledges receiving from the nurse a completed statement, on a form provided by the department, of intention to practice. The statement shall consist of an affidavit by the nurse; and an affidavit by the physician employer or by the administrator, assistant administrator, or director of nursing of a hospital or public health agency where the nurse intends to practice professional nursing. The affidavit of the nurse and the affidavit of the physician employer or administrator, assistant administrator or director of nursing of the hospital or public health agency shall contain the information deemed by the board necessary for the statement. This subsection does not permit the nurse to practice for more than a three (3) month period, or in any event, after being notified by the board, through the department, that the application for a license has been denied, or, in all cases, after being notified by the board, through the department, to cease and desist this practice. Notice shall be given by registered or certified mail to the address of the applicant as it appears in the statement of the applicant."*

Section 120. Section 66-1231, R.C.M. 1947, is amended to read as follows:

**"66-1231. Qualifications of applicants for licensed practical**

**nurse.** An applicant for a license to practice as a licensed practical nurse shall submit to the *department* written evidence, verified by oath, that the applicant:

(1) Has successfully completed at least an approved four (4) year high school course of study, or the equivalent as determined by the *office of the superintendent* of public instruction;

(2) Has successfully completed the prescribed curriculum in an approved school of practical nursing and holds a diploma or certificate therefrom; *and*

(3) *Meets* other qualification requirements the board, acting under the practical nursing administration, *prescribes.*"

Section 121. Section 66-1232, R.C.M. 1947, is amended to read as follows:

**"66-1232. License of practical nurse by examination — by endorsement without examination.** (1) An applicant for a license to practice as a practical nurse is required to pass a written examination in subjects as the board, acting under the practical nursing administration, *determines.* A written examination may be supplemented by an oral or practical examination. *On* successfully passing *the* examination the *department* shall issue to the applicant a license to practice as a licensed practical nurse.

(2) The board — practical nursing administration, may issue a license to practice as a licensed practical nurse without examination to an applicant who has been licensed or registered as a licensed practical nurse or person entitled to perform like services under a different title under the laws of another state, territory, or country, if in the opinion of the practical nursing administration the applicant meets the requirements for practical nurses in this state.

(3) An applicant may, pending application for a practical nursing license *under subsection (2) of this section*, practice practical nursing as an employee of a physician or in a hospital or public health agency for a period of not longer than three (3) months from the date the *department* acknowledges receiving from *the* practical nurse a completed statement, on a form provided by the *department*, of intention to practice. *The* statement shall consist of an affidavit by *the* practical nurse; and an affidavit by the physician employer or by the administrator, assistant administrator, or director of nursing of a hospital or public health agency where *the* practical nurse intends to practice practical nursing. The affidavit of *the* nurse and the affidavit of *the* physician employer or administrator, assistant administrator, or director of nursing of *the* hospital or public health agency shall contain the information *considered* by the board necessary for *the* statement. *This subsection does not permit the nurse to practice for more than a three (3) month period, or in any event, after being notified by the board, through the department, that the application for a license has been denied, or in all cases, after being notified by the board, through the department, to cease and desist this practice. Notice shall be given by registered or certified mail to the address of the applicant as it appears in the statement of application.*"



Section 122. Section 66-1234, R.C.M. 1947, is amended to read as follows:

"66-1234. **Fee.** *An applicant for a license to practice as a licensed practical nurse shall pay a fee of twenty-five dollars (\$25) to the department at the time the application is submitted, which fee shall be returned to the applicant if the application is withdrawn not later than five (5) days prior to the date of examination or the final submission to the board of application for endorsement without examination, subject to a deduction of five dollars (\$5) to be retained by the department.*"

Section 123. Section 66-1236, R.C.M. 1947, is amended to read as follows:

"66-1236. **Renewal of license.** (1) *The license of a person licensed under this act must be annually renewed. Before December 1 of each year, the department shall mail an application form for renewal of license to every person to whom a license was issued or renewed during the year. The applicant shall carefully complete and subscribe the application form and return it to the department with a renewal fee of five dollars (\$5) before January 1. On receipt of the application and fee the department shall verify the accuracy of the application against its record, and from other sources the board considers reliable, and issue to the applicant a certificate of renewal for the current year beginning January 1 and expiring December 31, following. The certificate of renewal renders the holder a legal practitioner of nursing for the period stated in the certificate of renewal.*

(2) *A licensee who allows his license to lapse by failing to renew the license may be reinstated by the board on satisfactory explanation for the failure to renew license and on payment of the current renewal fee prescribed by the board.*

(3) *A person practicing nursing during the time following the date his license has expired is an illegal practitioner and is subject to the penalties provided for violations of this act.*"

Section 124. Section 66-1237, R.C.M. 1947, is amended to read as follows:

"66-1237. **Disposition of fees.** *Fees and fines collected by the department under this act shall be deposited in the earmarked revenue fund for the use of the board subject to section 82A-1603(6).*"

Section 125. Section 66-1238, R.C.M. 1947, is amended to read as follows:

"66-1238. **Schools of nursing — application for approval.** *An institution desiring to conduct a school of professional or practical nursing shall apply to the department, and submit evidence that:*

(1) *It is prepared to carry out the prescribed basic professional nursing curriculum or the prescribed curriculum for practical nursing, as the case may be; and*

(2) *It is prepared to meet other standards established by this law and by the board.*"

Section 126. Section 66-1239, R.C.M. 1947, is amended to read as follows:

"66-1239. **Survey and approval — secretary.** (1) A survey of the institution or institutions with which the school is to be affiliated shall be made by the *department*, which shall submit a detailed written report of the survey to the board. If, in the opinion of the board, the requirements for an approved school of nursing (professional or practical) are met, it shall approve the school as an approved school of nursing.

(2) When the board determines that *an* approved school of nursing is not maintaining the standards required by *law* and by the board, notice in writing specifying the defect shall be immediately given to the school. A school which fails to correct these conditions to the satisfaction of the board within a reasonable time shall be removed from the list of approved schools of nursing.

(3) *Any secretary hired by the department to provide services to the board in connection with the board's duties of prescribing curricula and standards for nursing schools, making surveys of and approving schools and courses, evaluating and approving courses for affiliation of student nurses, and reviewing qualifications of applicants for licensure for the board shall be:*

(a) *A citizen of the United States;*

(b) *A graduate of an approved school of nursing;*

(c) *A holder of at least a bachelor's degree;*

(d) *A registered professional nurse with at least five (5) years' experience in teaching or administration in an approved school of nursing."*

Section 127. Section 66-1240, R.C.M. 1947, is amended to read as follows:

"66-1240. **Grounds for discipline.** The board, acting under the appropriate administration, *may* deny, revoke or suspend a license to practice nursing or discipline a licensee *on* proof that the person:

(1) Is guilty of fraud or deceit in procuring or attempting to procure a license to practice nursing;

(2) Is guilty of a crime or gross immorality;

(3) Is unfit or incompetent by reason of negligence, habit, or other causes;

(4) Is habitually intemperate or is addicted to the use of habit-forming drugs;

(5) Is mentally or physically incompetent;

(6) Is guilty of unprofessional conduct;

(7) Has willfully or repeatedly violated this act; but only after compliance with section 66-1241."

Section 128. Section 66-1241, R.C.M. 1947, is amended to read as follows:

"66-1241.-**Disciplinary proceedings.** (1) *On* filing a sworn complaint in writing with the board, charging a person with violation of section 66-1240 as a ground for disciplinary action, the board shall fix a time and place for a public hearing before the board to be convened in membership as the five-member board for professional nurses, or as the eight-member board for practical nurses, *depending on* the professional or practical status of the licensee, nurse, or person against whom complaint is made.

(2) If the person charged is found guilty of the charges the board may refuse to *grant* a license to the applicant or may revoke or suspend a license issued to a licensee.

(3) A revoked or suspended license may be reissued after one (1) year, in the discretion of the board."

Section 129. There is a new section to be numbered 66-1301.1, R.C.M. 1947, which reads as follows:

66-1301.1. **Definitions.** Unless the context requires otherwise, in this act:

(1) "Board" means the board of optometrists, provided for in section 82A-1602.19; and

(2) "Department" means the department of professional and occupational licensing, provided for in Title 82A, chapter 16."

Section 130. Section 66-1302, R.C.M. 1947, is amended to read as follows:

"66-1302. **Provisions regulating practice of optometry.** (1) *It is* unlawful for *a* person:

(a) To practice optometry in *this* state unless he *has* first obtained a certificate of registration, and filed *it* or a certified copy with the county clerk and recorder of the county of his residence;

(b) To sell, barter, or offer to sell or barter *a* certificate of registration issued by the *department*;

(c) To purchase or procure by barter *a* certificate of registration with intent to use *it* as evidence of the holder's qualification to practice optometry;

(d) To *materially* alter with fraudulent intent *a* certificate of registration;

(e) To use or attempt to use *a* certificate of registration which has been purchased, fraudulently issued, counterfeited, or materially altered as a valid certificate of registration;

(f) To practice optometry under a false or assumed name;

(g) To willfully make *a materially* false statement in *an* application for an examination by the *department* or for a certificate of registration;

(h) To advertise by displaying a sign or by otherwise holding himself

out to be an optometrist without having at the time a valid certificate of registration;

(i) To replace or duplicate ophthalmic lenses with or without a prescription or to dispense ophthalmic lenses from prescriptions, without having at the time a valid certificate of registration as an optometrist; however, *this subsection does not* prevent an optical mechanic from doing the merely mechanical work on an ophthalmic lens which is ordered on a prescription signed by a *registered* optometrist and is dispensed only by *the* optometrist or a person employed by *the* optometrist and who does so in the office of and under the direct personal supervision of an optometrist;

(j) To take or make measurements for the purpose of fitting or adapting ophthalmic lenses to the human eye, without having at the time a valid certificate of registration. A person who *takes* or *makes* measurements or *uses* mechanical *devices* for *this* purpose or who in the sale of spectacles, eyeglasses, or lenses *uses*, in the testing of the eyes, lenses other than the lenses actually sold, *is* practicing optometry. *However*, this section *does not* apply to the prescriptions of qualified optometrists when sent to a recognized optical laboratory.

(k) To advertise at a price, or stated terms of a price, or as being free, the following: The examination or treatment of the eyes, furnishing of optometrical services, or furnishing a lens, lenses, contact lens, contact lenses, glasses, frames, or fitting thereof. *However, this subdivision does not apply to advertising goggles, sunglasses, colored glasses, or occupational eye-protective devices, if they are not made with refractive values and are not advertised in connection with the practice of optometry or professional service.*

(l) To adapt a lens to direct contiguous contact to the human eyeball without having at the time a valid certificate of registration as an optometrist.

(2) *When the board has reasonable cause to believe that a person is violating this section, or a rule issued under this chapter, it may, in addition to other remedies provided in this chapter, bring an action for injunctive relief in district court in the county where the violation occurs to enjoin the person from engaging in or continuing the violation. The department may employ legal counsel to prosecute these actions. In these actions, and on notice and hearing, an order or judgment may be entered awarding a temporary restraining order or final injunction as considered proper by the judge of the district court in the county where the violation occurred. This chapter does not apply to physicians and surgeons authorized to practice under the laws of this state nor to a person employed in the office of and acting under the direct personal supervision of a physician or surgeon, nor to a person excepted from this chapter by section 66-1316.*

Section 131. Section 66-1303, R.C.M. 1947, is amended to read as follows:

"66-1303. **Rules — seal.** (1) The board *may adopt* rules for the regulation, conduct, supervision, and procedure governing all applicants for certificates of registration as optometrists and the practice of optometry not inconsistent with the provisions of this act.

(2) *The board shall have a common seal."*

Section 132. Section 66-1304, R.C.M. 1947, is amended to read as follows:

"66-1304. **Officers of board — meetings.** *The board shall annually choose from its members a president and secretary, both of whom may administer oaths and take affidavits. The board shall meet at least once each year at Helena, or some other place designated by the president, on the fourth Monday of July, and in addition, whenever, and wherever the president and secretary call a meeting. The department shall keep a record of the proceedings of the board, which shall be open to public inspection.*"

Section 133. Section 66-1305, R.C.M. 1947, is amended to read as follows:

"66-1305. **Examinations — admission to practice — nonresidents.**

(1) The board shall *adopt* rules relative to and governing the qualifications of applicants for certificates of registration as optometrists; and if the applicant does not meet the requirements of *the* rules, *he* is not eligible to take an examination to practice optometry in this state. If the applicant meets the requirements of *the* rules, *he*, must pass an examination given by *the department, subject to section 82A-1603. Examinations* shall be practical in character and *designed* to ascertain the applicant's fitness to practice the profession of optometry, and shall be conducted in the English language. The *department* shall publish and distribute the examination requirements for a certificate to practice optometry in *this* state. The board may accept the grades an applicant has received in the written examinations given by the national board of examiners in optometry.

(2) No person *is* eligible to take *the* examination *unless he* is eighteen (18) years of age, a citizen of the United States, and of good moral character.

(3) No person *is* eligible to take *the* examination unless he *has* certificates of graduation from an accredited high school and from a school of optometry *in which* the practice and science of optometry is taught in a course of study covering eight (8) semesters, or four (4) years, of actual attendance and which is accredited by the international association of boards of examiners in optometry. *Instead of the* certificates of graduation an applicant for examination may, with like effect, furnish an affidavit that he has practiced optometry exclusively for a period of at least six (6) years in some other state or states.

(4) A person desiring to be examined in optometry shall file an application in the manner prescribed by *the* board at least four (4) weeks before the examination *is* held, and a fee of twenty-five dollars (\$25) shall accompany *the* application.

(5) A person successfully passing *the* examination shall be registered in a register, which shall be kept by the *department*, and on the payment of a fee of ten dollars (\$10) shall receive a certificate of registration signed by the members of *the* board.

(6) *If* an applicant for a certificate of registration has been admitted to practice optometry in *another* state, and has *attained* an average of seventy-five percent (75%) in his examination in *the* other state, he may,

at the discretion of the board, be granted a certificate to practice his profession in *this state*, without examination, *on* payment of all fees, *if* the state from which *the* applicant comes offers equal privileges to applicants for certificates of registration from this state."

Section 134. Section 66-1307, R.C.M. 1947, is amended to read as follows:

"66-1307. **Renewal of registration — revocation — fees.** A registered optometrist who desires to continue the practice of optometry in this state shall annually before July 2 of each year pay to the *department* a renewal fee not to exceed the sum of fifty dollars (\$50) in return for which a renewal of registration shall be issued. If *a person fails or neglects* to procure his annual renewal of registration, his certificate of registration shall be revoked by *the* board; however, no certificate of registration *may* be revoked without ninety (90) days' notice having been given to the delinquent, who within *this* period *may renew* his certificate of registration on the payment of the renewal fee with a penalty of thirty-five dollars (\$35)."

Section 135. Section 66-1308, R.C.M. 1947, is amended to read as follows:

"66-1308. **Registration of certificate in county.** Recipients of the certificate of registration shall present *it* for record to the county clerk and recorder of the county in which they reside, and shall pay a fee of one dollar (\$1) to the county clerk and recorder for recording *it*. *The* county clerk and recorder shall record *the* certificate in a book to be provided by him for that purpose. A person licensed, *who moves* from one county to another in this state, shall, before engaging in the practice of optometry in *the* other county, obtain from the county clerk and recorder of the county in which *the* certificate of registration is recorded a certified copy of *the* record, or else obtain a new certificate of registration from the *department* and shall before commencing practice in *the* county, file the *certificate* for record with the county clerk and recorder of the county to which he *moves*, and pay the county clerk and recorder, for recording *it*, a fee of one dollar (\$1). A failure, neglect, or refusal on the part of a person holding *the* certificate or copy of record to file *it* for record, for six (6) months after issuance, *forfeits it*. *The department* is entitled to a fee of one dollar (\$1) for the reissue of a certificate and the county clerk and recorder of a county *is* entitled to a fee of one dollar (\$1) for making and certifying the copy of the record of a certificate."

Section 136. Section 66-1311, R.C.M. 1947, is amended to read as follows:

"66-1311. **Compensation of board.** Each member of the board may receive as compensation the sum of twenty-five dollars (\$25) and necessary expenses for each day actually engaged in the duties of his office. *Money collected* by the *department* shall be deposited in the earmarked revenue fund for the use of the board, *subject to section 82A-1603(6)*."

Section 137. Section 66-1312, R.C.M. 1947, is amended to read as follows:

**"66-1312. Revocation of certificate for cause.** *The board may revoke a certificate of registration for conviction of crime, habitual drunkenness, contagious or infectious disease, gross immorality, gross ignorance or inefficiency in his profession, or unprofessional conduct. Unprofessional conduct includes obtaining a fee by fraud or misrepresentation; employing directly or indirectly a suspended or unlicensed optometrist to perform work covered by this act; directly or indirectly accepting employment to practice optometry from a person not having a valid certificate of registration as an optometrist, or accepting employment to practice optometry from a company or corporation, or accepting employment to practice optometry for a company or corporation; permitting another to use his certificate of registration; soliciting or sending a solicitor from house to house; treatment or advice in which untruthful or improbable statements are made; professing to cure disease; advertising in which ambiguous or misleading statements are made; or the use in advertising of the expression "eye specialist" or "specialist on eyes" in connection with the name of an optometrist. This act does not prohibit legitimate or truthful advertising by a registered optometrist. Before a certificate is revoked, the holder shall be given a notice and an opportunity for a hearing.*"

Section 138. Section 66-1314, R.C.M. 1947, is amended to read as follows:

**"66-1314. Penalty for violations.** *A person who violates this act or the rules of the board is guilty of a misdemeanor, and on conviction shall be fined not less than two hundred dollars (\$200) and not more than five hundred dollars (\$500), or imprisoned in the county jail not exceeding six (6) months, or both fined and imprisoned. Fines collected shall be deposited in the earmarked revenue fund for the use of the board, subject to section 82A-1603(6)."*

Section 139. Section 66-1318, R.C.M. 1947, is amended to read as follows:

**"66-1318. Attendance at continuing educational programs prerequisite for license renewal — exemption.** *A licensed optometrist in active practice in this state is required to attend not less than twelve (12) hours annually of scientific clinics, forums, or optometric educational studies as may be provided or approved by the board as a prerequisite for his license renewal. A copy of this section shall be sent to each licensee by the department prior to the license renewal date each year. The board may exempt from this requirement those licensees who submit satisfactory proof that they were prevented from attending educational programs during the preceding year due to illness or for other good reason."*

Section 140. Section 66-1401, R.C.M. 1947, is renumbered 82A-1602.20, and is amended to read as follows:

**"82A-1602.20. Board of osteopathic physicians — appointment — qualifications — term.** (1) *There is a board of osteopathic physicians.*

(2) *The board consists of three (3) members appointed by the governor. Each member shall be a qualified practicing resident osteopath and a graduate of a legally authorized school of osteopathy.*

(3) *Each member shall serve for a term of four (4) years."*

Section 141. There is a new section to be numbered 66-1401.1, R.C.M. 1947, which reads as follows:

66-1401.1. **Definitions.** Unless the context requires otherwise, in this act: (1) "Board" means the board of osteopathic physicians, provided for in section 82A-1602.2; and,

(2) "Department" means the department of professional and occupational licensing, provided for in Title 82A, chapter 16.

Section 142. Section 66-1402, R.C.M. 1947, is amended to read as follows:

"66-1402. **Duties of board and department.** (1) *The board shall elect a president, a secretary, and treasurer on the first Tuesday in March each year, from among its number, and shall have a seal, and its president and secretary may administer oaths.*

(2) *The department shall, subject to section 82A-1603, hold examinations at the state capitol on the first Tuesday in March and September of each year.*

(3) *The board shall hold meetings as necessary, each session not to exceed three (3) days.*

(4) *The department shall issue a certificate of qualification to applicants having a diploma from a legally recognized and regularly conducted school of osteopathy at the time it was issued, or who pass required examinations under section 66-1404. The certificate shall be signed by the president and secretary of the board, and attested by its seal, and is conclusive of the right of the lawful holder to practice osteopathy in this state.*

(5) *The department shall keep a record of the board's proceedings; a register of applicants for a license, including his name, age, and time spent in the study and practice of osteopathy, and the name and location of the college of osteopathic medicine from which the applicant holds a diploma; and a register of the names of applicants licensed and rejected under this act. These books are prima facie evidence of matters recorded."*

Section 143. Section 66-1403, R.C.M. 1947, is amended to read as follows:

"66-1403. **Regulation — osteopathic licenses — educational qualifications — renewal.** (1) *It is unlawful for a person to practice osteopathy in this state without a license from the department. An applicant applying for licensure shall be a person of good moral character. An applicant shall present evidence to the board that he has completed the following educational and professional requirements: four (4) years of high school or its scholastic equivalent; at least two (2) years preprofessional college education in an accredited college or university; and four (4) years professional education in an osteopathic college conforming to the minimum educational standards for osteopathic colleges established by the American osteopathic association and which is approved by the board. Application shall be made on forms prescribed by the board and furnished by the department. An applicant who fails the examination is entitled to a second examination without charge.*



(2) *A person holding a certificate to practice under this act and who is in active practice in this state, shall before April 1 of each year pay a renewal fee of fifteen dollars (\$15) to the department; and a person holding a certificate to practice under this act, who is not in active practice, shall before April 1 of each year pay a renewal fee of seven dollars and fifty cents (\$7.50) to the department. The department shall before March 15 of each year send a notice to each person holding a valid certificate to practice under this act and from whom a fee is due stating that the fee is due.*

(3) *The certificate to practice under this act automatically becomes void when the renewal fee is not paid at the time named. However, the board may reinstate a practitioner whose certificate has lapsed on payment of back renewal fees or on payment of fifty dollars (\$50) if the lapsed fees exceed that amount."*

Section 144. Section 66-1404, R.C.M. 1947, is amended to read as follows:

**"66-1404. Temporary certificates.** The secretary of the board may *authorize the department*, upon examination, *to issue* a certificate to an applicant to practice osteopathy until the next meeting of *the board* when he shall report the facts, at which time the temporary certificate *expires*, but *the temporary certificate may not be issued* after the board has once rejected the applicant."

Section 145. Section 66-1405, R.C.M. 1947, is amended to read as follows:

**"66-1405. Subjects of examination.** (1) *A person commencing the practice of osteopathy in this state, in any of its branches, shall apply to the department for a license to do so, and the applicant at the time and place designated by the board, shall submit to an examination in the following subjects: anatomy, physiology, chemistry, pathology, bacteriology, gynecology, obstetrics, and theory and practice of osteopathy, and other subjects taught in well regulated and recognized schools of osteopathy and considered advisable by the board and shall present evidence of having actually attended, as required in section 66-1403, a legally authorized and regularly conducted school of osteopathy, recognized by the board, except as otherwise provided in section 66-1402.*

(2) *Examination papers on subjects peculiar to osteopathy shall be graded by the department, subject to section 82A-1603. The examination shall be scientific and practical, but of sufficient severity to test the candidate's fitness to practice osteopathy.*

(3) *After examination the department shall issue a license to applicants who pass the examination to practice osteopathy in this state, which license shall be granted by not less than two (2) members of the board, attested by the board's seal. The fee for the examination and license is twenty dollars (\$20)."*

Section 146. Section 66-1410, R.C.M. 1947, is amended to read as follows:

**"66-1410. Compensation of board — deposit of fees.** (1) *Each of*

the members of *the* board may receive as compensation a sum not to exceed twenty dollars (\$20) for each day actually engaged in the duties of their office, together with legitimate and necessary expenses incurred in attending the meetings of *the* board.

(2) The fees collected by the department under this chapter shall be deposited in the earmarked revenue fund for the use of the board, *subject to section 82A-1603(6).*"

Section 147. Section 66-1411, R.C.M. 1947, is amended to read as follows:

"66-1411. **Graduates may be licensed without examination — practitioners from other states.** A graduate of a reputable school of osteopathy, who has been strictly examined and licensed to practice osteopathy in another state, may be licensed to practice osteopathy in this state on production to the board of his diploma, and the license obtained in *the* other state, and satisfactory evidence of good moral character, and the payment of fees required of other applicants; but the board may *have* the applicant *examined* as to his qualifications."

Section 148. Section 66-1502, R.C.M. 1947, is amended to read as follows:

"66-1502. **Definitions.** *Unless the context requires otherwise, in this act:*

(1) "**Pharmacy**" means a drug store or other established place registered by the *department of professional and occupational licensing*, in which prescriptions, drugs, medicines, chemicals, and poisons are compounded, dispensed, vended, or sold at retail.

(2) "**Pharmacist**" means a natural person licensed by the *department* to prepare, compound, dispense, and sell drugs, medicines, chemicals, and poisons, and *who may* affix to his name the term REG-PH.

(3) "**Intern**" means a natural person licensed by the *department* to prepare, compound, dispense, and sell drugs, medicines, chemicals, and poisons in a pharmacy having a pharmacist in charge.

(4) "**Drug**" means (a) articles recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or *a* supplement to *them*; (b) articles intended for use in diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; (c) articles (other than food) intended to affect the structure or function of the body of man or other animals; and (d) articles intended for use as a component of *an* article specified in subsection (a), (b) or (c); but does not include devices or their components, parts, or accessories.

(5) "**Medicine**" means a remedial agent which has the property of curing, preventing, treating, or mitigating diseases, or which is used for *this* purpose.

(6) "**Poison**" means a substance which, when introduced into the system, either directly or by absorption, produces violent, morbid, or fatal changes or which destroys living tissue with which it comes in contact.

(7) "Chemical" means medicinal or industrial substances, whether simple, compound, or obtained through the process of the science and art of chemistry, whether of organic or inorganic origin.

(8) "Board" means the board of pharmacists, provided for in section 82A-1602.21.

(9) "Person" includes an individual, copartnership, corporation, or association.

(10) "Department" means the department of professional and occupational licensing, provided for in Title 82A, chapter 16.

(11) "Wholesale" means a sale for the purpose of resale.

(12) "Commercial purposes" means the ordinary purposes of trade, agriculture, industry, and commerce, exclusive of the practices of medicine and pharmacy.

(13) "Prescription" means an order given individually for the person for whom prescribed directly from the prescriber to the furnisher or indirectly to the furnisher by means of an order signed by the prescriber and bearing the name and address of the prescriber, his license classification, the name of the patient, the name and the quantity of the drug or drugs prescribed, the directions for use and the date of its issue. These stipulations apply to both written and telephoned prescriptions."

Section 149. Section 66-1503, R.C.M. 1947, is renumbered 82A-1602.21, and is amended to read as follows:

"82A-1602.21. **Board of pharmacists — appointment — qualifications — term.** (1) *There is a board of pharmacists.*

(2) *The board consists of three (3) members appointed by the governor. The governor shall appoint the members from a list submitted annually by the Montana state pharmaceutical association. The list shall contain the names of five (5) qualified persons for each appointment. Each member shall be a graduate of the college of pharmacy of the university of Montana, or of a college or school of pharmacy recognized and approved by, or a member of, the American association of colleges of pharmacy. Each member shall have at least five (5) consecutive years of practical experience as a pharmacist immediately before his appointment. However, one (1) member may be a registered pharmacist of fifteen (15) years' practical experience and actually engaged in the practice of pharmacy. A member who, during his term of office, ceases to be actively engaged in the practice of pharmacy in this state, shall be automatically disqualified from membership on the board.*

(3) *Each member shall serve for a term of three (3) years. A member shall be removed from office by the governor on proof of malfeasance or misfeasance in office, after reasonable notice of charges against him and after a hearing."*

Section 150. Section 66-1504, R.C.M. 1947, is amended to read as follows:

"66-1504. **Powers of board and department.** (1) *The board shall annually elect from its members a president, vice-president, and secretary.*

(2) *The board shall:*

- (a) *Regulate* the practice of pharmacy in *this* state subject to this act;
  - (b) *Determine* the minimum equipment necessary in and for a pharmacy and drug store;
  - (c) *Regulate* under therapeutic classification, the sale of drugs, medicines, chemicals, and poisons and their labeling;
  - (d) *Regulate* the quality of drugs and medicines dispensed in this state, using the United States pharmacopoeia and the national formulary, or revisions thereof, as the standards;
  - (e) *Request the department to enter* and inspect at reasonable times places where drugs, medicines, chemicals, or poisons are sold, vended, given away, compounded, dispensed, or manufactured. It is a misdemeanor for a person to refuse to permit or otherwise prevent *the department* from entering *these* places and making *an* inspection.
  - (f) *Regulate* the practice of interns *under* national standards;
  - (g) *Revoke* temporarily or permanently, licenses issued by *the department* to a pharmacist or intern whenever the holder of *the* license has obtained *it* by false representations or fraud, *is* an habitual drunkard or addicted to the use of narcotic drugs, *has* been convicted of a felony, *has* been convicted of violating the pharmacy law, or *has* been found guilty by the board, of incompetency in the preparation of prescriptions or guilty of gross immorality affecting the discharge of his duties as a pharmacist or assistant.
  - (h) *Make* rules for the conduct of its business.
  - (i) *Perform* other duties and exercise other powers as *this act requires*.
  - (j) *Adopt and authorize the department to* publish rules for carrying out and enforcing *this act*.
- (3) *The department shall license, register, and examine, subject to section 82A-1603, applicants whom the board considers qualified under this act; license pharmacies and certain stores under this act; and issue certificates of "certified pharmacy" under this act."*

Section 151. Section 66-1505, R.C.M. 1947, is amended to read as follows:

"66-1505. **Salaries and expenses of officers of board.** Each member of the board shall receive fifteen dollars (\$15) a day for his actual services and his necessary expenses in attending meetings."

Section 152. Section 66-1506, R.C.M. 1947, is amended to read as follows:

"66-1506. **Examination of applicants for registration — fees — certificates.** (1) The board shall meet at least once a year to transact its business. *The department shall give* reasonable notice of examinations by mail, to known applicants. The *department* shall record the names of persons examined together with the grounds *on* which the right of each to examination was claimed and also the names of persons registered by examination or otherwise. The fee for *an* examination *is* twenty-five

dollars (\$25) which fee may, in the discretion of the board, be returned to applicants not taking the examination.

(2) *On again making payment of the fee an applicant who fails is entitled to take the next succeeding examination free of charge.*

(3) *The fee for registration by reciprocity is fifty dollars (\$50).*

(4) To be entitled to examination as a pharmacist, the applicant shall be a citizen of the United States, of good moral character, and a graduate of the school of pharmacy of the university of Montana or of a college or school of pharmacy recognized and approved by, or a member of, the American association of colleges of pharmacy, but *the applicant may not receive a registered pharmacist's license until he has complied with the internship requirements established by the board. During this period, if the applicant has passed the examination, he shall be licensed as an intern only.*

(5) The board may, in its discretion, *authorize the department to grant registration without examination, to a pharmacist licensed by a board of pharmacy or a similar board of another state which accords similar recognition to licensees of this state, if the requirements for registration in the other state are, in the opinion of the board, equivalent to the requirements of this act.* Every person licensed and registered under this act shall receive from the *department* an appropriate certificate attesting the fact, which shall be conspicuously displayed at all times in his place of business. If the holder *is* entitled to manage or conduct a pharmacy in *this* state for himself or another, the fact shall be set forth in the certificate."

Section 153. Section 66-1507, R.C.M. 1947, is amended to read as follows:

"66-1507. **Annual renewal of registration fees.** A person licensed and registered by the *department* shall annually pay to the *department* before June 30, a renewal of registration fee of fifteen dollars (\$15). A default in the payment of a renewal fee for a period of thirty (30) days after the date it is due *increases* the renewal fee to thirty dollars (\$30). It *is* unlawful for a person who refuses or fails to pay *the* renewal fee to practice pharmacy in this state. The practice of pharmacy is a professional practice affecting the public health, safety, and welfare and is subject to regulation and control in the public interest. A certificate and renewal *expires* at the time prescribed, not later than one (1) year from its date. A *defaulter* in a renewal fee may be reinstated within one (1) year of *the* default without examination *on* payment of the arrears."

Section 154. Section 66-1508, R.C.M. 1947, is amended to read as follows:

"66-1508. **Store license — certified pharmacy license — suspension or revocation.** (1) The *department* shall *on* application *on* forms *prescribed by the board* and *on* the payment of an annual fee of five dollars (\$5), license stores other than a pharmacy *in which are sold* ordinary household or medicinal drugs prepared in sealed packages or bottles by a manufacturer, qualified under the laws of the state *in which the*

manufacturer resides. The name and address of *the* manufacturer shall appear conspicuously on each package sold by *the* licensee. It is unlawful for a store to sell, deliver, or give away household medicinal drugs, without first having secured a license and thereafter keeping it in force by proper renewal. *This subsection does not prevent a vendor from selling a patent or proprietary medicine in the original package when plainly labeled, nor nonmedical articles usually sold by vendors.*

(2) The board shall provide for the annual registration and licensing *by the department* of every pharmacy doing business in this state. On presentation of evidence satisfactory to the board and on application on a form *prescribed* by the board and on the payment of an annual fee of twenty dollars (\$20), the *department* shall *issue* a license to a pharmacy as a "CERTIFIED PHARMACY"; however, *the license may be granted only to pharmacies operated by registered pharmacists or registered interns qualified under this act. The license must be displayed in a conspicuous place in the pharmacy for which it is issued, and expires on June 30 following the date of issue. It is unlawful for a person to conduct a pharmacy, use the word pharmacy to identify his business, or use the word pharmacy in advertising unless a license has been issued and is in effect.*

(3) The board may suspend, revoke, or refuse to renew a store or pharmacy license obtained by false representation or fraud; when the pharmacy for which the license *is* issued is kept open for the transaction of business without a pharmacist in charge; when the person to whom the license *is* granted has been convicted of a violation of *this act*, a felony, or a violation of the Federal Food, Drug and Cosmetic Act of June 25, 1938, (52 *Stats.* 1040 through 1059) if a natural person, whose pharmacist or intern license has been revoked; or when the store or pharmacy is conducted in violation of this act. Before a license can be revoked the holder *is* entitled to a hearing by the board."

Section 155. Section 66-1511, R.C.M. 1947, is amended to read as follows:

"66-1511. **Poison register to be kept by pharmacists may be required by board.** The board may by a rule require registered *pharmacists* to keep a poison register which may require a record of poisons sold or disposed of, the signature of the purchaser, and other information required by *the* board. *The board may provide by rule what are poisons.*"

Section 156. Section 66-1512, R.C.M. 1947, is amended to read as follows:

"66-1512. **Revocation of license for failure to keep record or falsifying.** *If a pharmacist sells or disposes of poison without keeping a record of it, keeps a false record of it, permits the sale or disposal of it without keeping a record, or otherwise violates rules made by the board the board may revoke the license of the pharmacist.*"

Section 157. Section 66-1521, R.C.M. 1947, is amended to read as follows:

"66-1521. **Attorney general to be attorney for board — prosecutions — duties of county attorneys.** The attorney general *is* the

attorney for the board. The *department* shall, under rules *adopted by the board*, assist the board and the attorney general in the administration and enforcement of this act. *The county attorney of a county in which an offense under this act is committed shall prosecute the offender.* The board, *the department*, or the county attorney *may* examine the books of a manufacturer, druggist, storekeeper, wholesale dealer, pharmacist, intern, or pharmacy *in this state* for the purpose of acquiring information to aid in prosecutions *under this act.* ”

Section 158. There is a new section to be numbered 66-1521.1, R.C.M. 1947, which reads as follows:

66-1521.1. **Qualifications of employee hired by department.** A person hired by the department to enter and inspect an establishment under this chapter; to examine the books of a manufacturer, druggist, storekeeper, wholesaler, pharmacist, or intern; to assist in a prosecution under this chapter; and to assist the board in supervising internships, reciprocity agreements, professional correspondence, and examinations shall be:

- (1) A citizen of the United States and a resident of this state; and
- (2) A pharmacist registered under this chapter with five (5) years of practical experience.

Section 159. Section 66-1527, R.C.M. 1947, is amended to read as follows:

“66-1527. **Disposition of fees and fines.** *Fines* paid under this act and fees collected by *the department* for registration and licenses issued under this act shall be deposited in the earmarked revenue fund for the use of the board, *subject to section 82A-1603(6).*”

Section 160. There is a new section to be numbered 66-1807.1, R.C.M. 1947, which reads as follows:

66-1807.1. **Definitions.** Unless the context requires otherwise, in this act:

- (1) “Board” means the board of public accountants, provided for in section 82A-1602.2; and
- (2) “Department” means the department of professional and occupational licensing, provided for in Title 82A, chapter 16.

Section 161. Section 66-1813, R.C.M. 1947, is renumbered 82A-1602.2, and is amended to read as follows:

“82A-1602.2. **Board of public accountants — appointment — qualifications — term.** (1) There is a board of public accountants.

(2) *The board consists of five (5) members appointed by the governor. The members are:*

(a) *Three (3) certified public accountants certified under section 66-1819 who have been certified and actively engaged in the practice of public accounting for at least five (5) years before their appointment. The Montana society of certified public accountants shall submit to the gover-*

nor biennially a list of names of two (2) candidates from which the appointments of these members may be made. However, the governor is not restricted to the names on this list. These members may not be residents of the same county.

(b) Two (2) public accountants licensed under section 66-1820 who have been actively engaged in the practice of public accounting for at least five (5) years before their appointment. The Montana society of public accountants shall submit to the governor biennially a list of names of two (2) candidates from which the appointment of these members may be made. However, the governor is not restricted to the names on this list. These members may not be residents of the same county.

(3) All members shall be residents of this state and citizens of the United States, and hold current licenses under section 66-1833. The governor shall remove any member whose license to practice has become void, revoked, or suspended, or who ceases to be engaged in the practice of public accounting.

(4) Each member shall serve for a term of six (6) years. A member who has served two (2) successive complete terms is not eligible for reappointment until after the lapse of one (1) year. The governor may, after a hearing, remove a member for neglect of duty or other just cause."

Section 162. Section 66-1815, R.C.M. 1947, is amended to read as follows:

"66-1815. **Powers and duties of department and board.** (1) The board shall elect annually a chairman, secretary, and treasurer from its members. (2) The board may adopt rules for the conduct of its affairs and the administration of this act. (3) A quorum for the transaction of business consists of three (3) members of the board. (4) The board shall have a seal which shall be judicially noticed. (5) The department shall keep records of the board's proceeding. In a proceeding in court, civil or criminal, arising out of or founded on this act, copies of these records certified as correct under the seal of the board are admissible in evidence as tending to prove the content of these records. (6) Each member of the board shall receive as compensation twenty dollars (\$20) for each day actually engaged in the duties of his office, and, in addition, shall be reimbursed for his actual and necessary expenses incurred in the discharge of his official duties."

Section 163. Section 66-1816, R.C.M. 1947, is amended to read as follows:

"66-1816. **Disposition of funds.** Fees and other moneys collected by the department under this act shall be deposited in the earmarked revenue fund for the use of the board, subject to section 82A-1603(6)."

Section 164. Section 66-1817, R.C.M. 1947, is amended to read as follows:

"66-1817. **Rule-making powers of the board.** The board may make rules of professional conduct appropriate to establish and maintain a high standard of integrity, dignity, and competency in the profession of public accountancy. At least sixty (60) days prior to the adoption of a rule or



amendment, the *department* shall mail copies of the proposed rule or amendment to each holder of a license issued under section 66-1833, with a notice advising him of the proposed effective date of the rule or amendment and requesting that he submit his comments *on it* at least fifteen (15) days prior to the effective date. *These* comments *are* advisory only. The *department's* certificate of mailing to licensed accountants *is* conclusive proof thereof."

Section 165. Section 66-1818, R.C.M. 1947, is amended to read as follows:

"66-1818. **Examinations.** *Except as provided in section 82A-1603(4), the department shall hold and grade a written examination in accounting, auditing, and related subjects as the board determines appropriate. The grade determination of the department is final in each case. The department shall use the examination and grading services of the American Institute of Certified Accountants. The examination shall be held at least annually and at such other times as applications warrant. The board may determine the time and place of examination and may adopt rules necessary for the orderly conduct of the examination.*"

Section 166. Section 66-1819, R.C.M. 1947, is amended to read as follows:

"66-1819. **Certificates of certified public accountants.** *Certification as a certified public accountant is available to any person:*

(1) Who is (a) a citizen of the United States or who has declared his intention of becoming a citizen, (b) is a resident of this state or has a place of business *in this state* or, as an employee, is regularly employed *in this state*, and (c) is of good moral character;

(2) Who *has* successfully passed the certified public accountants' examination; and

(3) Who meets the requirements of education and experience in sections 66-1823, 66-1824 and 66-1825."

Section 167. Section 66-1820, R.C.M. 1947, is amended to read as follows:

"66-1820. **License of public accountants.** *Licensure as a public accountant is available to any person:*

(1) Who is (a) a citizen of the United States or who has declared his intention of becoming a citizen, (b) is a resident of this state or has a place of business *in this state* or, as an employee, is regularly employed *in this state*, and (c) is of good moral character;

(2) Who meets the requirements of education and experience set forth in sections 66-1823, 66-1824 and 66-1825; and

(3) Who complies with the qualifications and requirements in any one of the subdivisions of section 66-1821."

Section 168. Section 66-1821, R.C.M. 1947, is amended to read as follows:

**"66-1821. Further requirements for licensure of public accountants.** (1) Persons serving in the armed forces of the United States on *July 1, 1969*, who immediately prior to entering *this* service held themselves out to the public as public accountants and who were engaged as principals, *in this state*, in the practice of public accounting as their principal occupation prior to service in the armed forces, may register with the *department* within six (6) months after the date of their separation from active service, and *on* registration and payment of the license fee, be *issued a license* by the *department* as a licensed public accountant. *A principal is either the owner of or a partner in an existing accounting practice on July 1, 1969.*

(2) A person who does not qualify under *subdivision (1)* must fulfill the following additional requirements, as a prerequisite to the issuance of a license as a licensed public accountant:

(a) *He* must pass the written examination in accounting practice, and

(b) *He* must also pass the written examination in either accounting theory or auditing, or *instead* of the examination in auditing or theory, he must be the holder of a United States Treasury card which is in good standing at the time of his sitting for the examination in accounting practice. The examinations referred to in this subdivision shall be those prescribed for subjects under section 66-1818, and shall be conducted and graded by the same standards as those given to candidates for certified public accountant."

Section 169. Section 66-1825, R.C.M. 1947, is amended to read as follows:

**"66-1825. Applicability of education and experience requirements.** (1) None of the foregoing education and experience requirements apply to a candidate for certified public accountant who holds a current license as a public accountant, or who, on *July 1, 1969*, was employed as a staff accountant in this state by a practicing public accountant, and is so employed at the time of his examination.

(2) A candidate who is otherwise eligible may take the examination provided for in section 66-1818 before meeting the age and experience requirements but the successful completion of *this* examination *does* not qualify him for a certificate or a license as a public accountant until he meets *these* requirements.

(3) The *board* may by *rule* provide for granting credit to a candidate for his satisfactory completion of a written examination in any one or more of the subjects of examination given by the licensing authority in *another* state, if when he took *the* examination he was not a resident of this state. *These rules* shall include requirements the *board determines* appropriate in order that *an* examination approved as a basis for credit *is*, in the judgment of the *board*, at least as thorough as that included in the most recent examination given *in this state* at the time of granting the credit.

(4) The experience requirements need not be continuous or for one (1) employer.

(5) Except as provided in *subdivision (1) of this section*, the applicable education and experience requirements *are* those in effect on the date of the examination by which the candidate successfully completes his examination; but the board may provide by *rule* for exceptions to the general rule in order to prevent what it determines to be undue hardship to candidates resulting from changes in the education and experience requirements."

Section 170. Section 66-1829, R.C.M. 1947, is amended to read as follows:

**"66-1829. Partnership composed of certified public accountants — registration thereof.** (1) A partnership engaged in this state in the practice of public accounting may register with the *department* as a partnership of certified public accountants provided it meets the following requirements:

(a) At least one (1) general partner must be a certified public accountant of this state in good standing, and must hold a license issued under section 66-1833 which is in effect;

(b) Each partner personally engaged *in* this state in the practice of public accounting must be a certified public accountant of this state in good standing and must hold a license issued under section 66-1833 which is in effect;

(c) Each partner must be a certified public accountant of some state in good standing; *and*

(d) Each staff member who is employed *in* this state, and who is certified under section 66-1819 or registered under section 66-1820, must hold a license issued under section 66-1833 which is in effect.

(2) Application for registration must be made *on* the affidavit of a general partner of *the* partnership who is a certified public accountant of this state in good standing. The board shall in each case determine whether the applicant is eligible for registration. A partnership which is registered may use the words "certified public accountants" or the abbreviation "CPA's" in connection with its partnership name. Notification shall be given the *department* within one (1) month after the admission to or withdrawal of a partner from *a* partnership so registered."

Section 171. Section 66-1830, R.C.M. 1947, is amended to read as follows:

**"66-1830. Temporary certificate and temporary license.** (1) *If* an applicant for a certificate as a certified public accountant meets the requirements for *the* certificate, other than the residence requirement, the board may, in its discretion *authorize the department to*, issue to him a temporary certificate as a certified public accountant which *is* effective only until the board *notifies* him that his application has been either granted or rejected. In no event *may a* temporary certificate be in effect for more than twelve (12) months.

(2) *If* an *applicant* for *licensure* as a public accountant meets the requirements for *licensing*, other than the residence requirement, the

board may, in its discretion, *authorize the department* to issue to him a temporary license, as a licensed public accountant, which *is* effective only until the board *notifies* him that his application has been either granted or rejected. In no event *may a* temporary license be in effect for more than twelve (12) months."

Section 172. Section 66-1831, R.C.M. 1947, is amended to read as follows:

**"66-1831. Partnerships composed of public accountants — registration thereof.** (1) A partnership engaged in this state in the practice of public accounting may register with the *department* as a partnership of public accountants provided it meets the following requirements:

(a) At least one (1) general partner must be a certified public accountant or a licensed public accountant of this state in good standing and a holder of a license issued under section 66-1833 *which is* in effect;

(b) Each partner personally engaged *in this* state in the practice of public accounting must be a certified public accountant or a licensed public accountant of this state in good standing and a holder of a license issued under section 66-1833 *which is* in effect;

(c) Each local manager in charge of an office or a firm in this state must be a certified public accountant or a licensed public accountant of this state in good standing and a holder of a license issued under section 66-1833 *which is* in effect; *and*

(d) Each staff member employed within this state, *and* who is certified under section 66-1819 or registered under section 66-1820, must hold a license issued under section 66-1833 which is in effect.

(2) Application for registration must be made *on* the affidavit of a general partner of *the* partnership who holds a license to practice in this state as a certified public accountant or as a licensed public accountant. The board shall in each case determine whether the applicant is eligible for registration. A partnership which is registered may use the words "public accountants" in connection with its partnership name. Notification shall be given the *department* within one (1) month after the admission to or withdrawal of a partner from *a* partnership so registered."

Section 173. Section 66-1832, R.C.M. 1947, is amended to read as follows:

**"66-1832. Registration of offices.** Each office established or maintained in this state for the practice of public accounting in this state by a certified public accountant or a partnership of certified public accountants or by a licensed public accountant or a partnership of licensed public accountants or by one registered under section 66-1828 shall be registered annually under this act with the *department*. A fee *may not* be charged for *this* registration. The principals of sole proprietorships and staff employees who are employed *in this* state and who are holders of certificates as certified public accountants must also hold a license issued under section 66-1833 which is in effect. *Partnerships must* be registered under section 66-1829 or section 66-1831, whichever is applicable, and foreign accountants under the provisions of section 66-1828."

Section 174. Section 66-1833, R.C.M. 1947, is amended to read as follows:

"66-1833. **Annual licenses to practice.** *Annual licenses* to engage in the practice of public accounting in this state shall be issued by the *department* to holders of the certificate of certified public accountant issued under section 66-1819 and to persons *licensed* under section 66-1820, *if* all offices, if any, of *the* certificate holder or licensed public accountant are maintained and registered under section 66-1832. There *is* an annual license fee in an amount to be determined by the board, not to exceed twenty-five dollars (\$25) for *a* year or part thereof. *Annual licenses* expire on December 31 of each year and may be renewed annually for a period of one (1) year by certificate holders and licensed public accountants in good standing *on* payment of an annual renewal fee of not to exceed twenty-five dollars (\$25). Failure of a certificate holder or licensed public accountant to apply for *the* annual license to practice within three (3) years from the expiration date of the *annual* license to practice last obtained or renewed, or three (3) years from the date *on* which the certificate holder or licensee was granted his certificate or license, *deprives* him of the right to *the* annual license, unless the board, in its discretion, determines *the* failure to have been due to excusable neglect. A certificate holder or licensed public accountant who is retiring from active practice or other employment because of illness, age, marriage, or other justifiable cause, in the opinion of the board, may be placed on an inactive list, without prejudicing his right to be issued *an* annual license at a future date. A request for inactive status must be sent to the *department* within the three-year period as outlined in this section."

Section 175. Section 66-1836, R.C.M. 1947, is amended to read as follows:

"66-1836. **Hearings before board.** (1) The board may initiate proceedings under this act either on its own motion or on the complaint of a person. *Hearings and rule-making proceedings shall be governed in all respects by the Montana Administrative Procedure Act.*"

Section 176. Section 66-1837, R.C.M. 1947, is amended to read as follows:

"66-1837. **Reinstatement.** *On* application in writing and after hearing pursuant to notice, the board may *authorize the department* to issue a new certificate to a certified public accountant whose certificate *has* been revoked, or may permit the relicensing of anyone whose license has been revoked, or may reissue or modify the suspension of a license to practice public accounting which has been revoked or suspended."

Section 177. Section 66-1924, R.C.M. 1947, is amended to read as follows:

"66-1924. **Title — license required.** (1) This act may be cited as the "Real Estate License Act of 1963."

(2) *It is unlawful for a person to engage in or conduct, directly or indirectly, or to advertise or hold himself out as engaging in or conducting*

the business, or acting in the capacity of a real estate broker or a real estate salesman within this state without a license as a broker or salesman, or otherwise *complying* with this act.

*(3) Corporations, partnerships, and associations may not be licensed under this act. A corporation or a partnership may act as a real estate broker if every corporate officer, and every partner, performing the functions of a "broker" as defined in section 66-1925(2), is licensed as a broker. All officers of a corporation or all members of a partnership, acting as a broker, are in violation of this act unless there is full compliance with this subsection."*

Section 178. Section 66-1925, R.C.M. 1947, is amended to read as follows:

*"66-1925. Definitions. Unless the context requires otherwise, in this act:*

*(1) "Real estate" includes leaseholds, as well as any other interest or estate in land, whether corporeal, incorporeal, freehold or nonfreehold, and whether the real estate is situated in this state or elsewhere.*

*(2) "Broker" includes an individual who for another, or for a fee, commission, or other valuable consideration, or who with the intent or expectation of receiving the same, negotiates or attempts to negotiate the listing, sale, purchase, rental, exchange, or lease of real estate or of the improvements thereon, or collects rents or attempts to collect rents, or advertises or holds himself out as engaged in any of the foregoing activities. The term "broker" also includes an individual employed by or on behalf of the owner or lessor of real estate, to conduct the sale, leasing, subleasing, or other disposition thereof at a salary or for a fee, commission, or any other consideration; it also includes an individual who engages in the business of charging an advance fee or contracting for collection of a fee in connection with a contract by which he undertakes primarily to promote the sale, lease, or other disposition of real estate in this state through its listing in a publication issued primarily for this purpose, or for referral of information concerning real estate to brokers, or both.*

*(3) "Salesman" includes an individual who, for a salary, commission, or compensation of any kind, is employed, either directly, indirectly, regularly, or occasionally, by a real estate broker to sell, purchase, or negotiate for the sale, purchase, exchange, or renting of real estate.*

*(4) "Person" includes individuals, partnerships, associations, and corporations, foreign and domestic, except that when referring to a person licensed under this act it means an individual.*

*(5) "Board" means the board of real estate, provided for in section 82A-1602.23.*

*(6) "Department" means the department of professional and occupational licensing, provided for in Title 82A, chapter 16."*

Section 179. Section 66-1927, R.C.M. 1947, is amended to read as follows:

"66-1927. **Board — powers and duties — compensation.** (1) *The board shall from time to time adopt rules to carry out the provisions of this act.*

(2) *The department shall keep a record of proceedings, transactions, communications and official acts of the board, be custodian of the records of the board and shall cause to be performed other duties as the board on the written request of two (2) or more members of the board or at other times as the chairman in his discretion considers necessary. Neither the chairman nor an employee of the department, hired to provide services to the board, may be an officer or paid employee of any real estate association or group of real estate dealers or brokers.*

(3) *Each member of the board shall receive as compensation for each one-half day or portion thereof actually spent on his official duties the sum of seven dollars and fifty cents (\$7.50) and his actual and necessary expenses incurred in the performance of other duties provided for by the board.*

(4) *The board shall adopt a seal of a design as it shall prescribe. Copies of records and papers kept by the department, certified by the chairman and authenticated by the seal of the board, shall be received in evidence in courts with like effect as the original. Records of the board are open to public inspection under rules it prescribes."*

Section 180. Section 66-1929, R.C.M. 1947, is amended to read as follows:

"66-1929. **Licenses — applicants for licenses.** (1) *Licenses may be granted only to individuals considered by the board to be of good repute and competent to transact the business of a broker or salesman in a manner as to safeguard the interests of the public.*

(2) *An applicant for a broker's license shall be a citizen of the United States; shall be at least eighteen (18) years of age; shall have graduated from an accredited high school or completed an equivalent education as determined by the board; shall have been actively engaged as a licensed real estate salesman for a period of two (2) years or shall have had experience or special education equivalent to that which a licensed real estate salesman ordinarily would receive during this two (2) year period as determined by the board, except that if the board finds that an applicant could not obtain employment as a licensed real estate salesman because of conditions existing in the area where he resides, the board may waive this experience requirement; and shall file an application for license with the department. The board shall require information it considers necessary from an applicant to determine his honesty, trustworthiness, and competency.*

(3) *An applicant for a salesman's license shall be at least eighteen (18) years of age; shall have received credit for completion of two (2) years of full curriculum study at an accredited high school or completed an equivalent education as determined by the board; and must file an application for license with the department. His application shall be accompanied by the recommendation of the licensed broker by whom the applicant will be employed or placed under contract, certifying that the applicant*

is of good repute and that the broker will actively supervise and train the applicant during the period the requested license remains in effect. The *department* shall issue to each licensed broker and to each licensed salesman a license and a pocket card in a form and size as the *board prescribes*."

Section 181. Section 66-1930, R.C.M. 1947, is amended to read as follows:

**"66-1930. Written examination — contents — time and place — exemptions.** In addition to proof of honesty, trustworthiness, and good reputation, *an* applicant whose application is then pending shall satisfactorily pass a written examination prepared by or under the supervision of the *board*. The examination shall be given at least once each six (6) months and at places within the state the *board prescribes*. The examination for a salesman's license shall include business ethics, writing, composition, arithmetic, elementary principles of land economics and appraisal, a general knowledge of the statutes of this state relating to deeds, mortgages, contracts of sale, agency, brokerage, and this act. The examination for a broker's license shall be of a more exacting nature and scope and more stringent than the examination for a salesman's license. An applicant who has failed twice in succession to pass the same class of examination is ineligible for a further examination for six (6) months."

Section 182. Section 66-1931, R.C.M. 1947, is amended to read as follows:

**"66-1931. License — issuance — suspension — revocation.** The *board may* regulate the issuance of licenses and revoke or suspend licenses issued under this act."

Section 183. Section 66-1932, R.C.M. 1947, is amended to read as follows:

**"66-1932. License — delivery — display — pocket card.** The *board* shall prescribe the form of license. A license shall *bear* the seal of the *board*. The license of a real estate salesman shall be delivered or mailed to the real estate broker by whom the real estate salesman is employed, and shall be kept in the custody and control of *the* broker. A broker *shall* display his own license conspicuously in his place of business. The *department* shall annually prepare and deliver a pocket card certifying that the person whose name appears is a registered real estate broker or a registered real estate salesman, stating the period for which fees have been paid and, on real estate salesman's cards only, the name and address of the broker employing *the* real estate salesman."

Section 184. Section 66-1933, R.C.M. 1947, is amended to read as follows:

**"66-1933. Bond of brokers and salesmen.** No license *may* be issued or renewed until the applicant for a broker's license or salesman's license has filed a bond with the *department* in the sum of ten thousand dollars (\$10,000), executed by a surety company authorized to do business in *this* state in a form approved by the *board* and conditioned that the applicant, if and when licensed, shall conduct his business and himself in accordance



with this act, and shall pay, to the extent of ten thousand dollars (\$10,000), judgments recovered against him for loss or damage to a person arising in the course of the applicant's practice as a real estate broker or salesman. Bonds given by licensees under this act, after approval, shall be filed and held in the office of the *department*. If for a reason the bond of any broker or salesman is canceled or voided, the license of the broker or salesman is automatically suspended until the broker or salesman is again fully bonded and the bond has been approved by the board. If the suspension is not terminated by rebonding and approval within thirty (30) days from the date of suspension, the license of the broker or salesman is automatically revoked."

Section 185. Section 66-1934, R.C.M. 1947, is amended to read as follows:

"66-1934. **Fees — when due.** (1) *The following fees shall be charged by the department and paid into the earmarked revenue fund for the use of the board, subject to sections 82A-1603(6):*

- (a) For each examination, a fee not to exceed fifty dollars (\$50).
  - (b) For each original resident broker's license issued, a fee not to exceed fifty dollars (\$50).
  - (c) For each annual renewal of a resident broker's license, a fee not to exceed fifty dollars (\$50).
  - (d) For each original nonresident broker's license issued, a fee not to exceed fifty dollars (\$50).
  - (e) For each annual renewal of a nonresident broker's license, a fee not to exceed fifty dollars (\$50).
  - (f) For each original salesman's license issued, a fee not to exceed twenty-five dollars (\$25).
  - (g) For each annual renewal of a salesman's license, a fee not to exceed twenty-five dollars (\$25).
  - (h) For each additional office or place of business, an annual fee not to exceed twenty-five dollars (\$25).
  - (i) For each change of place of business or change of employer or contractual associate, a fee not to exceed twenty-five dollars (\$25).
  - (j) For each duplicate license, where the original license is lost or destroyed and affidavit is made, a fee not to exceed ten dollars (\$10).
  - (k) For each duplicate pocket card, where the original pocket card is lost or destroyed and affidavit is made, a fee not to exceed ten dollars (\$10).
- (2) The board shall adopt a schedule of fees within the limits set by this section. However, a fee once set for one of the items for which a fee is charged cannot be increased or decreased until at least one (1) year has passed since the fee for that particular item was last increased or decreased.

(3) *Annual fees are due and payable for the ensuing year during the month of December of each year. Failure to remit annual fees before January 1 automatically cancels the license, but otherwise the license remains in effect continuously from the date of issuance, unless suspended or revoked by the board for just cause.*"

Section 186. Section 66-1935, R.C.M. 1947, is amended to read as follows:

**"66-1935. Requirements for office — employment of salesmen — issuance and display of license.** (1) A resident licensed broker shall maintain a fixed office *in* this state. The original license of the broker and the original license of each salesman in the employ of or under contract with *the* broker shall be prominently displayed in the office. The address of the office and a branch office shall be designated on the broker's license. In case of removal from the designated address, the licensee shall notify the *department* before removal or within ten (10) days thereafter, designating the new location of this office, and paying the required fee, whereupon a license for the new location for the unexpired period shall *be issued*.

(2) A salesman *may* not be employed by, or under contract to, more than one (1) licensed broker nor *may* he perform services for a broker other than the one designated *on* the license issued to the salesman. *When* a licensed salesman desires to change his employment or contractual relationship from one licensed broker to another, he shall notify the *department* promptly in writing of *these* facts, pay the required fee, and return his license and pocket card, and a new license and pocket card shall be issued. No salesman shall directly or indirectly work for or with a broker until he has been issued a license to work for or with that broker. *On* termination of a salesman's employment or contractual relationship he shall surrender his license and pocket card to his broker, who shall return them to the *department* for cancellation.

(3) Only one (1) license shall be issued to a salesman to be in effect at one time."

Section 187. Section 66-1936, R.C.M. 1947, is amended to read as follows:

**"66-1936. Transactions with nonresidents and with nonlicensed brokers or salesmen — consent to legal process.** (1) It is unlawful for a licensed broker to employ or compensate directly or indirectly a person for performing the acts regulated by this act who is not a licensed broker or licensed salesman. *However*, a licensed broker may pay a commission to a licensed broker of another state *if the* nonresident broker has not conducted and does not conduct in this state a service for which a fee, compensation, or commission is paid. *This* subsection *does* not limit the *next* subsection.

(2) A nonresident of this state, who is actively engaged in the real estate business, who maintains a place of business in another state, and who has been licensed in *the* other state to conduct *this* business in that state, may obtain a license as a broker in this state by complying with this act. *However*, this section *applies* only to those brokers of other states

which offer the same privileges to the licensed brokers of this state. *The nonresident licensee need not maintain a place of business in this state. The board may authorize the department to license a nonresident broker without examination, if he files with the department an authorized or certified copy of the license issued to the nonresident for conducting this business in another state, and by paying to the department the same license fee as is required for obtaining a broker's license in this state. The board may, in its discretion, refuse to authorize the department to issue a broker's license to an applicant who is not a resident of this state.*

(3) A nonresident broker shall file an irrevocable written consent that legal actions arising out of a commenced or completed transaction may be commenced against *the nonresident broker in a county of this state which may be appropriate and designated by section 93-2904; and the consent shall provide that service of summons in this action may be served on the department, for and on behalf of the nonresident broker, and this service is sufficient to give the court jurisdiction over the nonresident broker and his salesman or agent conducting a transaction in a county. The consent shall be acknowledged, and if made by a corporation, shall be authenticated by its seal.*"

Section 188. Section 66-1937, R.C.M. 1947, is amended to read as follows:

**"66-1937. Grounds for refusal — suspension or revocation of license.** *The board may, on its own motion, and shall, on the sworn complaint in writing of a person, investigate the actions of a real estate broker or a real estate salesman, subject to sections 82A-1603 and 82A-1604, and may revoke or suspend a license issued under this act when the broker or salesman has been found guilty by a majority of the board of any of the following practices:*

(1) Intentionally misleading, untruthful, or inaccurate advertising, whether printed or by radio, display, or other nature, which advertising in any material particular or in any material way misrepresents any property, terms, values, policies, or services of the business conducted;

(2) Making any false promises of a character likely to influence, persuade, or induce;

(3) Pursuing a continued and flagrant course of misrepresentation, or making false promises through agents or salesmen, or any medium of advertising, or otherwise;

(4) Use of the term "realtor" by a person not authorized to do so, or using *another* trade name or insignia of membership in a real estate organization of which the licensee is not a member;

(5) Failing to account for or to remit money coming into his possession belonging to others;

(6) Accepting, giving, or charging *an* undisclosed commission, rebate, or profit on expenditures made for a principal;

(7) Acting in a dual capacity of broker and undisclosed principal in a transaction;

(8) Guaranteeing, authorizing, or permitting *a* person to guarantee future profits which may result from the resale of real property;

(9) Offering real property for sale or lease without the knowledge and consent of the owner or his authorized agent or on terms other than those authorized by the owner or his authorized agent;

(10) Inducing *a* party to a contract of sale or lease to break *the* contract for the purpose of substituting a new contract with another principal;

(11) Accepting employment or compensation for appraising real property contingent *on* the reporting of a predetermined value or issuing an appraisal report on real property in which he has an undisclosed interest;

(12) Negotiating a sale, exchange, or lease of real property directly with an owner or lessee if he knows that *the* owner has a written outstanding contract in connection with *the* property, granting an exclusive agency to another broker;

(13) Soliciting, selling, or offering for sale real property by conducting lotteries for the purpose of influencing a purchaser or prospective purchaser of real property;

(14) Representing or attempting to represent a real estate broker, other than the employer, without the express knowledge or consent of the employer;

(15) Failing voluntarily to furnish a copy of *a* written instrument to *a* party executing *it* at the time of its execution;

(16) Paying a commission in connection with *a* real estate sale or transaction to *a* person who is not licensed as a real estate broker or real estate salesman under this act;

(17) Intentionally violating *a* rule *adopted* by the *board* in the interests of the public and in *conformity* with this act;

(18) Failing, if a salesman, to place, as soon after receipt as is practicably possible, in the custody of his registered broker, deposit money or other money entrusted to him as salesman by *a* person;

(19) Demonstrating his unworthiness or incompetency to act as a broker or salesman; *or*

(20) Conviction of a felony."

Section 189. Section 66-1938.1, R.C.M. 1947, is amended to read as follows:

"66-1938.1. **Hearings — procedure.** (1) When the *board* has investigated an application for a real estate broker's or salesman's license or, *subject to sections 82A-1603 and 82A-1604*, investigated the actions of a real estate broker or salesman *on* the sworn complaint in writing of *a* person, or *on* its own motion, and *the* investigation *has* revealed reasonable grounds for denying *the* application, or reasonable indication of a violation of this act as cause for revoking or suspending a license issued to *a* real estate broker or salesman, the *board* shall, before denying the application or revoking or suspending the license, *give notice and set the matter for hearing.*"

Section 190. Section 66-1943, R.C.M. 1947, is amended to read as follows:

**"66-1943. Real estate meetings and clinics open to all licensees.**

(1) *The board may, subject to section 82A-1603, conduct, hold, or assist in conducting or holding real estate clinics, meetings, courses, or institutes and incur necessary expenses in this connection.*

(2) *The board may assist libraries and educational institutions in sponsoring studies and programs for the purpose of raising the standards of the real estate business and the competency of licensees."*

Section 191. Section 66-1944, R.C.M. 1947, is amended to read as follows:

**"66-1944. Attorney for board.** The attorney general shall act as attorney for the *board* in actions and proceedings brought by or against it under this act. *Fees* and expenses of the attorney general acting in *this* capacity shall be paid out of *board* moneys in the earmarked revenue fund."

Section 192. Section 66-1945, R.C.M. 1947, is amended to read as follows:

**"66-1945. Publication of directory.** The *department* shall annually publish a directory of licensees, including a list of licenses suspended and revoked, which shall contain such other data the *board determines* to be in the interest of real estate licensees and the public."

Section 193. There is a new section to be numbered 66-2101.1, R.C.M. 1947, which reads as follows:

66-2101.1. **Definitions.** Unless the context requires otherwise, in this act:

(1) "Board" means the board of abstracters, provided for in section 82A-1602.1; and

(2) "Department" means the department of professional and occupational licensing, provided for in Title 82A, chapter 16.

(3) "Registered abstractor" means a person who has obtained a certificate of registration by the board under this act.

Section 194. Section 66-2102, R.C.M. 1947, is renumbered 82A-1602.1, and is amended to read as follows:

**"82A-1602.1. Board of abstracters — appointment — qualifications — term.** (1) *There is a board of abstracters.*

(2) *The board consists of three (3) members appointed by the governor. Each member shall be a registered abstractor during his term. Members shall be from different counties.*

(3) *Each member shall serve for a term of three (3) years."*

Section 195. Section 66-2103, R.C.M. 1947, is amended to read as follows:

"66-2103. **Organization of board.** *The board shall elect a chairman and a secretary. The board may compel the attendance of witnesses, and the chairman and secretary may administer oaths. The board may make rules necessary for the administration of this act.*"

Section 196. Section 66-2104, R.C.M. 1947, is amended to read as follows:

"66-2104. **Compensation of members of board — disposition of funds.** (1) Each member of the board shall receive a compensation of five dollars (\$5) per day for actual services while attending meetings or otherwise engaged in business connected with the board, and shall receive ten cents (\$.10) per mile for each mile actually traveled, and five dollars (\$5) per day for expenses while absent from home on business connected with the board.

(2) *Money received under this act shall be deposited in the earmarked revenue fund for the use of the board, subject to section 82A-1603(6).*"

Section 197. Section 66-2105, R.C.M. 1947, is amended to read as follows:

"66-2105. **Records of board.** *The department shall keep a register of the names of applicants for registration, and for certificates of authority, with their place of business and other information the board considers appropriate, including the action taken by the board, and the dates on which certificates of registration and certificates of authority are issued.*"

Section 198. Section 66-2108, R.C.M. 1947, is amended to read as follows:

"66-2108. **Examination of applicants.** *A person desiring to obtain a certificate of registration under this act shall make application to the department and shall pay to the department an examination fee of twenty-five dollars (\$25). The application shall be on a form prescribed by the board and shall contain information desired by the board. The board shall fix a date and place for the examination of the applicant, of which notice shall be given the applicant by mail, who shall present himself at the examination. The department, subject to section 82A-1603, shall examine the applicant under the rules adopted by the board.*"

Section 199. Section 66-2110, R.C.M. 1947, is amended to read as follows:

"66-2110. **Certificate of registration — contents and issuance — temporary certificates.** (1) *The certificate of registration issued by the department shall recite, among other things, that the holder has complied with this act, and entitles the holder to take charge of an abstract office holding a certificate of authority under this act.*

(2) *Certificates of registration shall be issued on the payment of a five dollar (\$5) fee and are valid for one (1) year from the date of issuance and shall be renewed annually by the department on application within thirty (30) days prior to expiration and on payment of one dollar (\$1) to the department. The board may authorize the department to issue temporary certificates of registration between meetings of the board.*"

Section 200. Section 66-2111, R.C.M. 1947, is amended to read as follows:

"66-2111. **Certificate of authority — contents and issuance.** (1) A person, firm, or corporation desiring to obtain a certificate of authority under this act shall make application to *the department* and shall pay to the *department* an application fee of five dollars (\$5). *The application shall be on a form prescribed by the board and shall contain information desired by it.*

(2) A person, firm, or corporation, who *furnishes* satisfactory proof to *the board* that *the* applicant has for use in *the* business a set of abstract books or other system of indices and *has* in charge of *the* business a registered abstracter, and *who furnishes* the bond, or other securities, and *pays* the application fee *is* entitled, *on* compliance with this law, to receive a certificate of authority.

(3) Certificates of authority *are* valid for one (1) year from the date of *issuance* and shall be renewed by *the department* on application within thirty (30) days prior to expiration *and on* payment of five dollars (\$5) to the *department*. *The application shall be accompanied by an affidavit and such other evidence considered necessary, showing that the applicant has complied with this act.*

(4) The certificate of authority issued by *the department* shall, among other things, recite that the bond or other securities have been filed and approved, and *the certificate authorizes* the person, firm, or corporation, named in it, to engage in and carry on the business of an abstracter of real estate titles in the county or counties of *this* state, in which *the* person, firm, or corporation has for use a set of abstract books or system of indices provided for in section 66-2101, and for that purpose to have access to the public records in *an* office of *a* city, county, or of the state during office hours, and to make memoranda or notation therefrom as may be necessary for the purpose of making abstracts, and the compiling, posting, copying, and keeping up of their abstract books, indices, or records, access to be during ordinary office hours."

Section 201. Section 66-2113, R.C.M. 1947, is amended to read as follows:

"66-2113. **Bond or other securities required.** (1) Before a certificate of authority *may* be issued, the applicant shall file with the *department* a bond to be approved by *the board*, running to the state of Montana, in the penal sum of five thousand dollars (\$5,000), for the use of *an* owner, mortgagee, or other person having an actual interest in the real estate covered by an abstract of title, or *a* title insurance company licensed and authorized to do business in this state, who may be aggrieved. *The bond or undertaking is* for the payment by *the* abstracter of damages that may be sustained by or may accrue to *a* person or company by reason of or on account of *an* error, deficiency, or mistake in *an* abstract or certificate of title, or *a* continuation thereof, made or issued by *the* abstracter. *The bond shall be written by a surety or other company issuing bonds and licensed and authorized to do business in this state. No personal bonds may be accepted. The bond or undertaking shall be in effect for a period*

of one (1) year, and may be renewed annually by a continuation certificate; however, *the continuation certificate may not increase the amount of liability under the original bond. No person, firm, or corporation is required to have in effect with the department, valid bonds in excess of the penal sum of five thousand dollars (\$5,000).*

(2) *Instead of the bond the applicant may deposit with the state treasurer public bonds or other securities as the board prescribes, approves, and considers sufficient to insure the payment of the penal sum of five thousand dollars (\$5,000). The securities deposited may be exchanged, with the approval of the board, for other securities. The party depositing the securities shall receive the interest and dividends on the securities deposited. The securities shall be subject to sale and transfer and to the disposal of the proceeds by the board only on the order of a court of competent jurisdiction, and for the benefit of persons aggrieved as in this section provided. The state treasurer shall give his receipt for the securities, and the state is responsible for their custody and safe return."*

Section 202. Section 66-2114, R.C.M. 1947, is amended to read as follows:

"66-2114. **Seal.** A person, firm, or corporation furnishing abstracts of title to real property under *this act* shall provide a seal, which shall have stamped on it the name and location of the person, firm, or corporation; and shall deposit with the *department* an impression of the seal and the names of persons authorized to sign certificates to abstracts before the certificate of authority *may be issued*. The seal shall be affixed to every abstract or certificate of title issued by the person, firm, or corporation, and to every continuation thereof."

Section 203. Section 66-2115, R.C.M. 1947, is amended to read as follows:

"66-2115. **Regulation of abstracters — violations.** (1) The board *may* cancel and revoke a certificate of registration issued to a person under this act for a violation of this act, or on a conviction of the holder of the certificate of a crime involving moral turpitude, or if the board finds the holder to be guilty of habitual carelessness or inattention to business or of fraudulent practices. The board *may* also cancel and revoke a certificate of authority issued to a person, firm, or corporation under this act for failure to furnish the bond or other securities required by section 66-2113, or new or additional bonds the board *considers* necessary, or for failure to maintain indices and abstract records, or for failure to have in charge of the business a registered abstractor, or for violation of this act.

(2) *On a verified complaint being filed with the department charging the holder of a certificate of registration with a violation of any of the provisions of subsection (1) of this section the board shall require the holder of the certificate to appear before it on a day fixed by the board, to show cause why the certificate should not be canceled."*

Section 204. Section 66-2201, R.C.M. 1947, is renumbered 82A-1602.24, and is amended to read as follows:



**"82A-1602.24. Board of veterinarians — appointment — qualifications — term — removal.** (1) There is a board of veterinarians.

(2) *The board consists of five (5) members appointed by the governor. The Montana state veterinary medical association shall, at each annual meeting, nominate twice the number of board members to be appointed that year. The names of these nominees shall be annually transmitted, under seal, to the governor before July 1. The governor shall, before August 1, appoint from this list the board members to fill the vacancies that will occur July 31. If no nominee has the required qualifications to be on the board, the governor may appoint any licensed and registered veterinarian.*

(3) *Each member shall be a reputable licensed veterinarian who has graduated from a college authorized by law to confer degrees, and have educational standards equal to those approved by the American veterinary medical association. Each member shall have actually and legally practiced veterinary medicine in either private practice or public service in this state for at least five (5) years immediately before his appointment.*

(4) *Each member shall serve for a term of five (5) years. The governor may, after notice and hearing, remove a member for misconduct, incapacity, or neglect of duty."*

Section 205. There is a new section to be numbered 66-2201.1, R.C.M. 1947, which reads as follows:

66-2201.1. **Definitions.** Unless the context requires otherwise, in this act:

(1) "Board" means the board of veterinarians, provided for in section 82A-1602.24; and

(2) "Department" means the department of professional and occupational licensing, provided for in Title 82A, chapter 16.

Section 206. Section 66-2202, R.C.M. 1947, is amended to read as follows:

**"66-2202. Organization of board — quorum — powers.** (1) *A board member shall receive a certificate of appointment from the governor.*

(2) *The board shall annually elect from its members a president, vice-president, and secretary-treasurer, and shall hold at least two (2) regular meetings each year. At a meeting three (3) members of the board constitute a quorum. If a member of the board, without cause, absents himself from two (2) of its regular meetings consecutively, his office is vacant.*

(3) *The board may adopt rules and orders necessary for the performance of its duties; prescribe forms for application for examination and license; prepare examinations and the department shall, subject to section 82A-1603, supervise the examination of applicants for license to practice veterinary medicine; obtain the services of professional examination agencies instead of its own preparation of examinations; and grant and revoke licenses.*

(4) *The department may employ attorneys, subject to the approval of the attorney general, to assist county attorneys in prosecutions brought*

under this chapter in the respective district courts of the state or to assist the attorney general in representing the board before the supreme court."

Section 207. Section 66-2203, R.C.M. 1947, is amended to read as follows:

"66-2203. **Expenses and funds — records and reports.** (1) Each member of the board *is* entitled to receive necessary traveling and subsistence expenses.

(2) The *department* shall keep complete *records of the board's* proceedings and of its receipts and disbursements and a full and accurate list of persons licensed and registered by *the board*. *These records are* public records, and *are* at all times open to public inspection.

(3) *Money received under this act* shall be deposited in the earmarked revenue fund for the use of the board, *subject to section 82A-1603(6).*"

Section 208. Section 66-2204, R.C.M. 1947, is amended to read as follows:

"66-2204. **Applications for license to practice — examinations — fees.** (1) A citizen of the United States desiring to begin the practice of veterinary medicine or veterinary surgery in *this state*, or who *desires* to hold himself out to the public as a practitioner of veterinary medicine or veterinary surgery, except as provided in section 66-2211, shall make application to *the department* for a license to do so. *The* application shall be *on* a form furnished by *the department*, and shall be accompanied by satisfactory evidence of the good moral character of the applicant, and shall present evidence of his having graduated in and received a degree from a legally authorized veterinary medical school having educational standards equal to those approved by the American veterinary medical association. On application, a photostatic copy of the diploma of *the* applicant shall be submitted to *the department* for inspection and verification. *The* photostatic copy *remains* the property of the *department*. A person applying for a license to practice shall pay to the *department* a fee of twenty-five dollars (\$25), which *may not* be refunded. *Subject to section 82A-1603, the board* shall, by means of examination, either oral, written or practical, or a combination of oral, written or practical as the board *determines*, ascertain the professional qualifications for license of applicants under this act. An investigation under reciprocity arrangements may replace examination for licensees from other states *under* section 66-2208. *The department* shall issue a license to all who are found to be, in the judgment of *the board*, competent to practice. A license *may not* be issued to a person who is not found by *the* examination or investigation to be competent.

(2) *The* examination shall be held in January and June of each year at a time and place specified by *the board*. *The* examination shall cover theory and practice, *pharmacology* and therapeutics, *animal* sanitation, surgery, communicable diseases, and other subjects, chosen by the board, *which* are ordinarily included in the curriculum of a school of veterinary medicine recognized and approved by the American veterinary medical association.

(3) *The department shall consecutively number applications received and note on each the disposition made of it and preserve them for reference, and shall number consecutively licenses issued.*

(4) *Applicants must achieve a grade of seventy percent (70%) in all subjects in order to obtain a license. An applicant who has failed an examination may apply to be re-examined at a subsequent examination, and shall pay another application fee in the amount of twenty-five dollars (\$25), and shall take another complete examination in all subjects.*

(5) *An applicant for examination may, in the discretion of the board, be given a temporary permit to practice veterinary medicine prior to taking the examination, if the applicant is employed by and working under the supervision of and in the same office with a veterinarian licensed under this act. The temporary permit is valid only until the date of the next examination. Under no circumstances may a second temporary permit be issued to the same person. A temporary permit may not be issued to a person who has failed an examination given under this section."*

Section 209. Section 66-2207, R.C.M. 1947, is amended to read as follows:

**"66-2207. Issuance, registration and reinstatement of licenses. (1)** The board *shall*, at the conclusion of a regular examination or after investigation under the reciprocity arrangements of section 66-2208, if in its judgment the applicant is qualified, *authorize the department to issue a license to practice veterinary medicine.*

(2) Every license granted shall be issued under seal, and shall be signed by the president and secretary-treasurer of the board, and shall state that the licensee has given satisfactory evidence of fitness as to age, character, veterinary medical education, and other matters required by law, and that after full examination or investigation under reciprocity arrangements he has been found qualified to practice.

(3) A person licensed to practice veterinary medicine in this state shall procure from the *department* before July 1, annually, his certificate of registration. The certificate shall be issued by the *department* on the payment of a fee to be fixed annually by the board, not exceeding the sum of ten dollars (\$10). The certificate is prima facie evidence of the right of the holder to practice veterinary medicine in this state during the time for which it is issued. Failure of a person licensed to procure a certificate of registration before July 1 annually constitutes a forfeiture of the license held by the person. A person who has thus forfeited his license may have it restored to him by making written application for restoration within one (1) year of the forfeiture setting forth the reasons for failure to procure the certificate of registration at the time specified and accompanied by payment of the registration fee *provided for in this section* and an additional restoration fee not in excess of ten dollars (\$10) as the board requires. The person making application for restoration of license within one (1) year of its forfeiture is not required to submit to examination.

(4) Notwithstanding any other provisions in this chapter, a person

licensed who enters, or is called to active duty by, a branch of the armed services of the United States is entitled to receive automatic registration of his license during the period of his duty with the armed services. *However*, within one (1) year after release or discharge from duty in the armed services he shall procure a certificate of renewal from the department and pay the regular fee. Failure to procure the certificate of renewal within one (1) year after release or discharge is the equivalent of a failure to procure a certificate of registration before July 1 of any year, and the same forfeiture and restoration requirements apply.

(5) A person licensed shall at all times have his residence and office address on file with the department."

Section 210. Section 66-2208, R.C.M. 1947, is amended to read as follows:

**"66-2208. Display of license and certificate — arrangement with other boards.** (1) A person *may not* practice veterinary medicine in this state without possessing and displaying prominently in his principal office a license and a current and valid certificate of registration issued under this act.

(2) The board may make arrangement with similar boards in the several states *insofar* as practicable, whereby due credit for state and territorial licenses *may* be allowed in this state to the licensees of these boards who desire to secure a license to practice veterinary medicine in this state, and by which licensees of the board in this state *may* secure credit for license issued by this board, when the licensees desire to secure a license to practice another state or territory. No arrangement *may* be made under this section which *may* lower the standard of practice of veterinary medicine in this state. The board may, if necessary, require an examination of applicants for a license from other states after a careful consideration of the credentials from these states. The board shall establish methods and procedures for investigation of applicants for a license by reciprocity. No license *may* be issued as a result of reciprocity between the states to an applicant unless he has been lawfully and continuously in practice as a licensed veterinarian for at least one (1) year in the state from which he applies immediately preceding the date of his application for a license to practice in this state."

Section 211. Section 66-2209, R.C.M. 1947, is amended to read as follows:

**"66-2209. Veterinary medicine defined.** (1) A person is considered practicing veterinary medicine when he does any of the following:

(a) Represents himself as or is engaged in the practice of veterinary medicine in any of its branches either directly or indirectly.

(b) Uses words, titles, or letters in this connection or on a display or advertisement or under circumstances so as to induce the belief the person using them is engaged in the practice of veterinary medicine. This use is prima facie evidence of the intention to represent oneself as engaged in the practice of veterinary medicine in any of its branches.

(c) Diagnoses, prescribes, or administers a drug, medicine, appliance,

application, or treatment of whatever nature, or performs a surgical operation or manipulation, for the prevention, cure, or relief of a pain, deformity, wound, fracture, bodily injury, physical condition, or disease of animals.

(d) Instructs, demonstrates, or solicits, by *a* notice, sign, or other indication, with contract either express or implied, or otherwise, with or without the necessary instruments for the administration of biologics or medicines or animal disease cures for the prevention and treatment of disease of animals and remedies for the treatment of internal parasites in animals.

(e) Performs *a* manual or laboratory procedure for the diagnosis of pregnancy, sterility, or infertility *on* livestock for remuneration or hire.

(2) *A person may not practice veterinary medicine or veterinary surgery in this state unless licensed, and registered as required by this chapter; nor may a person practice veterinary medicine or surgery whose authority to practice is suspended or revoked by the board."*

Section 212. Section 66-2210, R.C.M. 1947, is amended to read as follows:

**"66-2210. Refusal, suspension, and revocation of license and certificate.** (1) The board may either refuse to *grant* a license or refuse to *grant* a certificate of registration or suspend or revoke a license and certificate of registration *on* any of the following grounds:

(a) Fraud or deception in procuring the license.

(b) The publication or use of *an* untruthful or improper statement, or representation with the view of deceiving the public, or *a* client or customer in connection with the practice of veterinary medicine.

(c) The conviction of a felony as shown by a certified copy of the record of the court of conviction.

(d) Habitual intemperance in the use of intoxicating liquors, or habitual addiction to the use of morphine, cocaine, or other habit-forming drugs, or conviction of a violation of *a* federal or state law relating to narcotic drugs.

(e) Immoral, unprofessional, or dishonorable conduct manifestly disqualifying the licensee from practicing veterinary medicine.

(f) Gross malpractice, including failure to furnish to the board, *on* written application by it, *a* report or information relating thereto.

(g) The employment of unlicensed persons to perform work which under this chapter can lawfully be done only by persons licensed to practice veterinary medicine.

(h) Fraud or dishonest conduct in applying or reporting diagnostic biological tests or in issuing health certificates.

(i) Failure to keep one's premises in a clean and sanitary condition.

(j) Violation of this act or of the rules or orders *of* the board.

(k) Revocation by proper authorities for any of the above reasons of a license issued by *another* state.

(2) The board may neither refuse to issue a license or certificate of registration nor suspend or revoke a license and certificate of registration for any cause, unless the person accused has been given notice and a public hearing by the board."

Section 213. Section 66-2211, R.C.M. 1947, is amended to read as follows:

**"66-2211. Interpretation of statute — persons not embraced within provisions.** This chapter does not apply to:

(1) Veterinarians in the performance of their official duties, either civil or military, in the service of the United States, unless they engage in the practice of veterinary medicine in a private capacity.

(2) Laboratory technicians and veterinary research workers, as distinguished from veterinarians, in the employ of *this* state, or *the* United States, and engaged in labors in laboratories under the direct supervision of the *board of livestock*, Montana state *university* or the United States.

(3) Lawfully qualified veterinarians from other states or a foreign country meeting legally licensed and registered Montana veterinarians in this state in consultation.

(4) A veterinarian residing on a border of a neighboring state and authorized under the laws thereof to practice veterinary medicine therein, who is actually called to attend cases in this state, but who does not open an office or appoint a place to meet patients or receive calls *in* this state, *if* veterinarians licensed and registered in this state are extended a like privilege to engage in the practice of veterinary medicine to the same extent in the neighboring state.

(5) The employment of veterinary medical students who have successfully completed three (3) years of the professional curriculum in veterinary medicine at a college having educational standards equal to those approved by the American veterinary medical association and authorized by law to confer degrees as assistants to veterinarians licensed and registered *under* this chapter. *However, this employment may not be contracted for or entered into except after written application for approval directed to the board and the written grant of approval by the board. This employment may not be for a period in excess of six (6) months from the date of completion of the third year of study.*

(6) The operations known and designated as spaying, castrating, or dehorning of *cattle, sheep, horses, swine and related species* are not the practice of veterinary medicine within the meaning of this chapter.

(7) *This chapter does not prohibit a person from treating his own farm animals or being assisted in this treatment by his employees regularly employed in the conduct of his business, or by other persons whose services are rendered gratuitously in case of emergency.*

(8) *This chapter does not prohibit the selling of veterinary remedies*

and instruments by a registered pharmacist at his regular place of business."

Section 214. Section 66-2326, R.C.M. 1947, is amended to read as follows:

"66-2326. **Definitions.** *Unless the context requires otherwise, in this act:*

(1) "*Engineer*" or "professional engineer" means a person who, by reason of his special knowledge of the mathematical and physical sciences and the principles and methods of engineering analysis and design, acquired by professional education and practical experience, is qualified to practice engineering, as attested by his legal registration as a professional engineer.

(2) "*Engineer-in-training*" means a candidate for registration as a professional engineer who is a graduate in an engineering curriculum of four (4) years or more from a school or college approved as of satisfactory standing by the engineers' council for professional development or its successor as an agency evaluating professional engineering curricula, or equivalent curricula approved by the board, or who has had four (4) years or more of experience in engineering work of a character satisfactory to the board; and who, in addition, has successfully passed the examination in the fundamental engineering subjects *under* section 66-2338, and who *has* received a certificate stating that he has successfully passed this portion of the professional examinations.

(3) "*Practice of engineering*" means any professional service or creative work requiring engineering education, training, and experience and the application of special knowledge of the mathematical, physical, and engineering sciences to professional services or creative work *such* as consultation, investigation, evaluation, planning, engineering planning service performed in connection with city, county, regional, and state planning, design, and supervision of construction for the purpose of assuring compliance with specifications and design, in connection with public or private utilities, structures, buildings, machines, equipment, processes, works, or projects, and including architectural work incidental to the practice of engineering. *The term does not include the work ordinarily performed by persons who operate or maintain machinery, equipment, communication lines, signal circuits, electric power lines, or pipelines.*

(4) "*Land surveyor*" means a person who engages in the practice of land surveying.

(5) "*Practice of land surveying*" includes surveying of areas for their correct determination and description and for conveyancing, or for the establishment or re-establishment of land boundaries and the plotting of lands and subdivisions.

(6) "*Board*" means the board of professional engineers and land surveyors, provided for in section 82A-1602.11.

(7) "*Department*" means the department of professional and occupational licensing, provided for in Title 82A, chapter 16."

Section 215. Section 66-2327, R.C.M. 1947, is renumbered 82A-1602.11, and is amended to read as follows:

**"82A-1602.11. Board of professional engineers and land surveyors — appointment — qualifications — removal — term.** (1) *There is a board of professional engineers and land surveyors.*

(2) *The board consists of seven (7) members appointed by the governor. The members are:*

(a) *Five (5) professional engineers who have been engaged in the practice of engineering for at least twelve (12) years, and who have been in responsible charge of important engineering work for at least five (5) years, or responsible charge of engineering teaching for at least five (5) years. No more than two (2) of these members may be from the same branch of engineering.*

(b) *Two (2) registered and practicing land surveyors.*

(3) *Each member shall be a citizen of the United States, and a resident of this state. Each newly appointed member shall have qualifications similar to the member whose term has expired. A member may not serve more than two (2) consecutive terms. (4) Each member shall serve for a term of five (5) years. The governor may remove a member for misconduct, incompetency, neglect of duty, or for any other sufficient cause."*

Section 216. Section 66-2333, R.C.M. 1947, is amended to read as follows:

**"66-2333. Receipts and disbursements — assistants.** The *department* shall collect all moneys under this act, and shall deposit *these* moneys in the earmarked revenue fund for the use of the board, *subject to section 82A-1603(6).*"

Section 217. Section 66-2334, R.C.M. 1947, is amended to read as follows:

**"66-2334. Records and reports — register.** (1) The *department* shall keep a record of its proceedings and a register of *the board's* proceedings and a register of applicants for registration, which shall show (a) the name, age, and residence of each applicant; (b) the date of the application; (c) the place of business of *the* applicant; (d) his educational and other qualifications; (e) the branch or branches of engineering in which the applicant qualified; (f) whether an examination was required; (g) whether the applicant was rejected; (h) whether a certificate of registration was granted; (i) the date of the action of the board; and (j) other information *considered* necessary by the board.

(2) The records of the *department* are prima facie evidence of the proceedings of the board and a transcript thereof, certified by the *department*, is admissible in evidence as if the original were produced."

Section 218. Section 66-2335, R.C.M. 1947, is amended to read as follows:

**"66-2335. Roster.** A roster showing the names and places of business of registered professional engineers and registered land surveyors shall be published by the *department* during the month of April each year. Copies of this roster shall be mailed to each person registered, placed on



file with the secretary of state, the clerk of each incorporated city and town and in the office of each county clerk and recorder within the state, and furnished to the public *on request*."

Section 219. Section 66-2337, R.C.M. 1947, is amended to read as follows:

"66-2337. **Application for registration — fees.** (1) Applications for registration shall be on forms prescribed *by the board* and furnished by the *department*, shall contain statements made under oath, showing the applicant's education and *a* detailed summary of his technical work, and shall contain not less than five (5) references, of whom three (3) or more shall be engineers or land surveyors having personal knowledge of his engineering or land surveying experience.

(2) The registration fee for professional engineers *is* thirty-five dollars (\$35), twenty dollars (\$20) of which shall accompany application, the remaining fifteen dollars (\$15) to be paid *on* issuance of *a* certificate. When a certificate of qualification issued by the national bureau of engineering registration is accepted as evidence of qualification, the total fee for registration as professional engineer *is* twenty dollars (\$20).

(3) The fee for engineer-in-training *is* twenty dollars (\$20), which shall accompany the application and shall include the cost of examination and issuance of *a* certificate. When certification as an engineer-in-training by another state, or *a* territory or possession of the United States or *country*, is accepted as evidence of qualification, the fee for engineer-in-training *is* five dollars (\$5). When registration as a professional engineer is completed by an engineer-in-training, an additional fee of fifteen dollars (\$15) shall be paid before issuance of *a* certificate as a professional engineer.

(4) The registration fee for land surveyors *is* thirty-five dollars (\$35), which shall accompany the application. The fee for registration as both a professional engineer and land surveyor *is* fifty dollars (\$50), thirty-five dollars (\$35) of which shall accompany the application, the remaining fifteen dollars (\$15) to be paid *on* issuance of *a* certificate.

(5) *If* the board *denies* issuance of a certificate of registration to any applicant the initial fee deposited shall be retained as an application fee."

Section 220. Section 66-2338, R.C.M. 1947, is amended to read as follows:

"66-2338. **Examinations.** (1) The board may require *an* applicant to take a written or oral examination which shall be held at *a* time and place the board *determines*. The board may require a registrant to take a written or oral examination, or both, in *a* proceeding to revoke, reprimand, suspend, or refuse to renew. When examinations are required on fundamental engineering subjects (such as are ordinarily given in college curricula), the applicant *may* take this part of the professional examination prior to his completion of the requisite years of experience in engineering work, and satisfactory passage of this portion of the professional examination by the applicant *constitutes* a credit for a period of ten (10) years. The *department* shall issue to each applicant successfully passing the examination in fundamental engineering subjects a certificate stating

that he has passed the examination and that his name has been recorded as an engineer-in-training.

(2) The scope of the examinations and the methods of procedure shall be prescribed by the board, but with special reference to the applicant's ability to design and supervise engineering works to ensure the safety of life, health, and property. Examinations shall be given for the purpose of determining the qualifications of applicants for registration separately in engineering and in land surveying. A candidate failing on examination may apply for re-examination at the expiration of six (6) months and will be re-examined without payment of additional fee. Subsequent examinations will be granted *on* payment of a fee determined by the board."

Section 221. Section 66-2339, R.C.M. 1947, is amended to read as follows:

"66-2339. **Certificates of registration — seal.** (1) *The department* shall issue a certificate of registration, *on* payment of *the* registration fee to *an* applicant who, in the opinion of the board, has satisfactorily met the requirements of this act. In the case of a registered engineer, the certificate shall authorize the "practice of engineering." In the case of an engineer-in-training, the certificate shall state that the applicant has successfully passed the examination in fundamental engineering subjects required by the board and has been enrolled as an "engineer-in-training." In the case of a registered land surveyor, the certificate shall authorize the "practice of land surveying." Certificates of registration and certificates as engineer-in-training shall show the full name of the registrant, shall have a serial number, and shall be signed by the chairman and secretary of the board under seal of the board.

(2) The issuance of a certificate of registration by *the department* is prima facie evidence that the person named is subject to the responsibilities and entitled to all the rights and privileges of a registered professional engineer or of a registered land surveyor, while the certificate remains unrevoked or unexpired.

(3) A registrant shall *on* registration obtain a seal of the design authorized by the board, bearing the registrant's name and the legend, "Registered Professional Engineer," or "Registered Land Surveyor." Plans, specifications, plats, and reports prepared by a registrant shall be stamped with the seal when filed with public authorities, during the life of the registrant's certificate. *It is* unlawful for anyone to stamp or seal documents with *the* seal after the certificate of the registrant named has expired or has been revoked, unless *the* certificate *has* been renewed or reissued."

Section 222. Section 66-2340, R.C.M. 1947, is amended to read as follows:

"66-2340. **Expiration and renewals — fee.** Certificates of registration expire on December 31 and become invalid on that date unless renewed. *The department* shall notify every person registered under this act, of the date of the expiration of his certificate and the amount of the fee required for its renewal for one (1) year. *This* notice shall be mailed at least one (1) month in advance of the date of the expiration of *the* certif-

icate. Renewal may be *made* during the month of December by the payment of a fee of ten dollars (\$10) for either a professional engineer or land surveyor or both. *Failure* on the part of a registrant to renew his certificate annually in the month of December *does* not deprive *him* of the right of renewal; however, a registrant who fails to pay *the* renewal fee for two (2) consecutive years shall be considered a new applicant and is required to submit a new application."

Section 223. Section 66-2344, R.C.M. 1947, is amended to read as follows:

"66-2344. **Registration of persons registered by other states or authorities.** The *department*, *subject to approval by the board*, may, on application and payment of a fee of twenty dollars (\$20), issue a certificate of registration as a professional engineer to a person who holds a certificate of qualification or registration issued to him by the national bureau of engineering registration, or of a state, territory, or possession of the United States, or of a country, *if* the applicant's qualifications meet the requirements of this act and the rules of the board."

Section 224. Section 66-2345, R.C.M. 1947, is amended to read as follows:

"66-2345. **Revocation of registration — hearings — reissuance of certificate.** (1) The board *may* revoke, reprimand, suspend, or refuse to renew the certificate of a registrant found guilty of:

(a) *Fraud* or deceit in obtaining a certificate of registration;

(b) *Gross* negligence, incompetency, or misconduct in the practice of engineering or land surveying as a registered professional engineer or land surveyor;

(c) A felony; or

(d) *Failure* of a land surveyor to comply with the Corner Recordation Act.

(2) Any person may *make* charges of fraud, deceit, gross negligence, incompetency, or misconduct against a registrant. *The* charges shall be made by affidavit, and subscribed and sworn to by the person making them, and filed with the *department*.

(3) *Charges*, unless dismissed by the board as unfounded or trivial, shall be heard by the board within three (3) months after the date on which they *were made*.

(4) If, after hearing, four (4) or more members of the board vote in favor of sustaining the charges, the board shall reprimand, suspend, refuse to renew, or revoke the certificate of registration of *the* registered professional engineer or land surveyor.

(5) The board, for reasons it *considers* sufficient, may reissue a certificate of registration to a person whose certificate has been revoked, *if* four (4) or more members of the board vote in favor of *the* reissuance. A new certificate of registration, to replace a certificate revoked, lost, destroyed, or mutilated, may be issued *by the department*, subject to the

rules of the board, and a charge of three dollars (\$3) shall be made for the issuance."

Section 225. Section 66-2346, R.C.M. 1947, is amended to read as follows:

**"66-2346. Violations — penalties — enforcement.** (1) A person who *practices* or *offers* to practice engineering or land surveying in this state without being registered *under* this act, or a person presenting or attempting to use as his own the certificate of registration or the seal of another, or a person who *gives* false or forged evidence to the board or *department* in obtaining a certificate of registration, or a person who *falsely impersonates* another registrant, or a person who *attempts* to use an expired or revoked certificate of registration, or a person who *violates* this act, is guilty of a misdemeanor, and shall, on conviction, be *fin*ed not less than one hundred dollars (\$100), nor more than five hundred dollars (\$500), or *imprisoned* for a period not exceeding three (3) months, or both.

(2) All officers of the law of this state, or a political subdivision thereof, *shall* enforce this act and prosecute persons violating it. The attorney general shall act as legal adviser of the board and render legal assistance necessary in carrying out this *chapter*."

Section 226. Section 66-2347, R.C.M. 1947, is amended to read as follows:

**"66-2347. Practices to which act inapplicable.** This act *does* not prevent or affect:

(1) The practice of any other legally recognized professions or trades;

(2) The mere execution of work by a contractor, as distinguished from its planning or design or the supervision of the construction of work as a foreman or superintendent;

(3) The practice of a person not a resident of and having no established place of business in this state, practicing or offering to practice *in this state* the profession of engineering, when *the* practice does not exceed in the aggregate more than thirty (30) days in a calendar year; *if the* person is legally qualified by registration to practice the profession in his own state or country in which the requirements and qualifications for obtaining a certificate of registration are not lower than those specified in this act;

(4) The practice of a person not a resident of and having no established place of business in this state, or who has recently become a resident, practicing or offering to practice engineering or land surveying *in this state* for more than thirty (30) days in a calendar year, if he *has* filed with the *department* an application for a certificate of registration and *has* paid the fee required by this act, *and if the* person is legally qualified by registration to practice engineering or land surveying in his own state or country in which the requirements and qualifications for obtaining a certificate of registration are not lower than those specified in this act. *This practice may* continue only for *the* time the board requires for the consideration of the application for registration;

(5) The performance of professional engineering functions or work by

a person who is an employee or acts under the supervision and direction of a professional engineer, *if the* person is not in responsible charge of engineering work;

(6) The practice of professional engineering by licensed architects where *the* practice is purely incidental to their practice of architecture;

(7) The practice of officers and employees of the *federal* government while engaged *in* this state in the practice of engineering or land surveying, for *the* government; or

(8) The practice of professional engineering or land surveying in this state by a firm, copartnership, corporation, or joint stock association, or by its members, officers, or employees on its behalf, *if* each person in responsible charge of activities of the firm, copartnership, corporation, or joint stock association which constitutes *the* practice is a professional engineer or land surveyor holding a certificate of registration under this act."

Section 227. There is a new section to be numbered 66-2401.1, R.C.M. 1947, which reads as follows:

66-2401.1. **Definitions.** Unless the context requires otherwise, in this act:

(1) "Board" means the board of plumbers, provided for in section 82A-1602.22; and

(2) "Department" means the department of professional and occupational licensing, provided for in Title 82A, chapter 16.

Section 228. Section 66-2402, R.C.M. 1947, is amended to read as follows:

"66-2402. **Application for state license — qualifications of licensees.** (1) A person desiring to work at the business of plumbing in a city or town shall file his application for a license with the *department*, and shall at *the* time and place designated by the board, be examined as to his qualifications for working in *this* business.

(2) The following requirements shall be met by applicants for a license:

(a) For journeyman plumbers:

(i) A specific record of five (5) years experience in the field of plumbing, of a character satisfactory to the board. This experience requirement may be fulfilled by working five (5) years in a major phase of the plumbing business, or by completing an apprenticeship program meeting the standards set by the *department of labor and industry* or the United States department of labor, bureau of apprenticeship, or credit towards this experience requirement may be given for time spent attending trade or other schools specializing in training of value in the plumbing business and approved by the board.

(ii) Satisfactory completion of an examination conducted by the *department*, subject to section 82A-1603(4), testing the applicant's general

knowledge of subjects necessary to plumbing, testing his knowledge of techniques and methods employed in the plumbing business, and establishing by practical demonstration his competence in the special skills required in plumbing.

(b) For master plumbers:

(i) Evidence of five (5) years experience as a journeyman plumber.

(ii) Evidence of three (3) years experience in supervisory capacities in the plumbing business.

(iii) Satisfactory completion of an examination for master plumbers testing his knowledge of the plumbing business and demonstrating his familiarity with business practices normally encountered in the plumbing business."

Section 229. Section 66-2403, R.C.M. 1947, is amended to read as follows:

"66-2403. **Compensation — examination of applicants.** (1) A member of the board is entitled to a compensation of twenty dollars (\$20) per diem for each day while actually engaged in the work of the board.

(2) An applicant for a license to work at the business of plumbing shall be examined as to his qualifications by the *department*, subject to section 82A-1603(4). The department shall examine each applicant for a license, to determine his qualifications and fitness for carrying on the business of a master plumber or journeyman plumber, and if the applicant successfully passes the examination prescribed by the board, then a license shall be issued to the applicant authorizing him to engage in the business and occupation of a master plumber or journeyman plumber, as the case may be. The license, when issued, authorizes the holder to carry on the business of a master plumber or a journeyman plumber, as the case may be, in any city or town in this state."

Section 230. Section 66-2404, R.C.M. 1947, is amended to read as follows:

"66-2404. **Application for license — information required — firms or corporations.** A person, firm, or corporation desiring to engage in or work in the business of plumbing, either as a master plumber or as a journeyman plumber, in this state, shall apply to the *department* by filing a written application stating his place of residence, age, experience, and the place where he has acquired his experience, and shall at a time and place designated by the board be examined as to his qualifications for the license. In the case of a firm or corporation, the examination and issuing of a license to one (1) member of the firm, or to the manager of the corporation, satisfies the requirements of this act as to master plumbers, but not as to journeymen plumbers. A person may not do the work of a master plumber unless licensed under this act."

Section 231. Section 66-2405, R.C.M. 1947, is amended to read as follows:

"66-2405. **Examination fee — expiration of license — annual**

**renewal — fees — bond required of master plumbers.** No applicant for a master plumber's license *may* submit to the examinations prescribed by the board until he *has* deposited with the *department* fifty dollars (\$50) as an examination fee, and no applicant for a journeyman plumber's license *may* submit to the examination prescribed by the board until he *has* deposited with the *department* twenty-five dollars (\$25) as an examination fee. A license when issued *expires* one (1) year from the date of issuance. A license issued to a master plumber or a journeyman plumber *may* be renewed annually, without examination, at any time prior to its expiration, by a written request for its renewal, directed to the *department*, and the payment of twenty-five dollars (\$25) for a renewal of a master plumber's license, and ten dollars (\$10) for a journeyman plumber's license, and renewal *is* also for the period of one (1) year. No master plumber's license *may* be issued or renewed unless the applicant *has* deposited with the *department* a good and sufficient bond to be approved by the board, or cash in the amount of five thousand dollars (\$5,000) to insure the faithful performance of his duties arising out of the state plumbing code or *this* chapter."

Section 232. Section 66-2406, R.C.M. 1947, is amended to read as follows:

"66-2406. **Apprentices — rules — record.** *This act does not* prohibit a person from working as an apprentice in the trade of plumbing with a plumber licensed by *the department*, and under *the rules made by the* board. *The* name and residence of each apprentice, and the names and residences of their employers, shall be filed with *the department*, and a record shall be kept by *the department*, showing the names and residences of *these* apprentices."

Section 233. Section 66-2407, R.C.M. 1947, is amended to read as follows:

"66-2407. **Disposition of license fees.** *Money* paid for license fees *under* this act shall be deposited *in* the earmarked revenue fund for the use of the board, *subject to section 82A-1603(6).*"

Section 234. Section 66-2409, R.C.M. 1947, is amended to read as follows:

"66-2409. **Quorum of board — rules.** (1) A majority of *the* board *constitutes* a quorum.

(2) *The* board *may* adopt rules necessary to carry out this act."

Section 235. Section 66-2414, R.C.M. 1947, is amended to read as follows:

"66-2414. **Rules of board — chairman.** The board shall adopt rules for the transaction of its business and *the department* shall keep a record of *the board's* official actions. It shall annually select a chairman from its members."

Section 236. Section 66-2416, R.C.M. 1947, is amended to read as follows:

**"66-2416. Minimum standards — state plumbing code — fee for copy of code.** (1) The board shall by rule prescribe minimum standards which *are* uniform and which *are* thereafter effective for all new plumbing installations. *The* rules shall contain the minimum requirements for plumbing set forth in the American standard national plumbing code, numbered ASA A40.8-1955, and published by the American society of mechanical engineers. Except as provided in subsection (2) of this section, *on* approval of the *department of health and environmental sciences* and the attorney general, and publication, the rules *become* the state plumbing code and have the force of law. A copy of the code shall be supplied to each person licensed under sections 66-2401 *through* 66-2411, or any other interested person, for a fee of no more than five dollars (\$5).

(2) Rules relating to building and equipment standards covered by the state or a municipal building code are effective after approval by the *department of administration* and filing with the secretary of state."

Section 237. Section 66-2417, R.C.M. 1947, is amended to read as follows:

**"66-2417. District court — jurisdiction — restraining orders.** The district court of any county *has* jurisdiction in equity, *on* application of *the* board or *the department of health and environmental sciences*, to enforce this act and to restrain from connection any new plumbing installations, *on* finding, after hearing, that *the* plumbing is inferior to the standards of *the* state plumbing code."

Section 238. Section 66-2420, R.C.M. 1947, is amended to read as follows:

**"66-2420. Revocation or suspension — initiation of proceedings — procedure.** Proceedings for the revocation or suspension of a plumber's license may be taken by the board *on* its motion, for matters *in* its knowledge, or may be taken *on* the information of another. *Accusations* must be in writing, *and* verified by *a* party familiar with the facts charged. *On* receiving the accusation the board shall, if it *considers* the accusation sufficient, make an order setting *it* for hearing, and requiring the accused to appear and answer *the* charge or accusation *at the* hearing, in the county *in which* the alleged violation occurred."

Section 239. Section 66-2422, R.C.M. 1947, is amended to read as follows:

**"66-2422. Hearing on revocation or suspension of license — procedure.** If the accused does not appear the board may proceed and determine the accusation in his absence. If the accused *confesses* the accusation or *refuses* to answer the charge, or *if on* the hearing, the board *finds* the charge or accusation true, it may order either revoking the license of the accused or suspending it for a fixed period."

Section 240. Section 66-2427, R.C.M. 1947, is amended to read as follows:

**"66-2427. Fixture fee — definition — payment — penalty.** For the purpose of providing adequate inspection and enforcement of the state plumbing code there shall be collected a fixture fee of fifty cents (\$.50)



per fixture for every fixture installed under the direction of a master plumber. For this purpose, a fixture *means* a device connected by a water connection to a water system or by a trap to a sewer line. This fixture fee *is* payable before installation by the licensed master plumber responsible for installation of the fixture. It *is* payable to the *department* under *rules adopted* by the board. *The* inspection and enforcement of the state plumbing code *are assigned to the department*. Installation of fixtures by a licensed master plumber without payment of the fee *subjects the* master plumber to a fine of one hundred dollars (\$100) for each offense or to forfeiture of his bond under section 66-2405."

Section 241. Section 66-2501, R.C.M. 1947, is amended to read as follows:

"66-2501. **Definitions.** *Unless the context requires otherwise, in this act:*

(1) "Physical *therapy*" means the treatment of a bodily or mental condition of a person by the use of the physical, chemical, and other properties of heat, light, water, electricity, massage, and therapeutic exercise including physical rehabilitation procedures. The use of roentgen rays and radium for diagnostic and therapeutic purposes, and the use of electricity for surgical purposes, including cauterization, are not authorized under the term "physical therapy" as used in the act.

(2) "Physical *therapist*" means a person who practices physical therapy.

(3) "Board" means the *Montana state* board of medical examiners, *provided for in section 82A-1602.15*.

(4) "*Department*" means the *department of professional and occupational licensing, provided for in Title 82A, chapter 16.*"

Section 242. Section 66-2502, R.C.M. 1947, is amended to read as follows:

"66-2502. **Qualifications of applicants for license.** To be eligible for a license as a physical therapist an applicant must:

(1) Be of good moral character;

(2) Have been graduated from a school of physical therapy approved by the council of medical education and hospitals of the American Medical Association;

(3) Either (a) pass to the satisfaction of the board an examination to determine his fitness for practice as a physical therapist; or, (b) be entitled to a license without examination *under* section 66-2505 or 66-2506."

Section 243. Section 66-2503, R.C.M. 1947, is amended to read as follows:

"66-2503. **Application for examination — examination fee.** Unless entitled to a license under section 66-2505, a person who desires to be licensed as a physical therapist shall apply to the *department*, in writing,

on a *form* furnished by the *department*. He shall embody in that application evidence under oath, satisfactory to the board, of his possessing the qualifications preliminary to examination required by section 66-2502. He shall pay to the *department* at the time of filing his application a fee of twenty-five dollars (\$25) which shall be deposited in the earmarked revenue fund for the use of the board, *subject to section 82A-1603(6)*. Anyone failing to pass the required examination *is* entitled to a second examination within six (6) months without additional fee."

Section 244. Section 66-2505, R.C.M. 1947, is amended to read as follows:

"66-2505. **Applicants licensed in another state.** The board may, in its discretion, *authorize the department* to register as a physical therapist, without examination, on the payment of the required twenty-five *dollar* (\$25) fee, an applicant for license who is a physical therapist licensed under the laws of another state or territory, if the requirements for a license for physical therapist in the state or territory in which the applicant was licensed were at the date of his license substantially equal to the requirements in force in this state."

Section 245. Section 66-2506, R.C.M. 1947, is amended to read as follows:

"66-2506. **Examination of applicants — scope.** The *department* shall, *subject to section 82A-1603*, examine applicants for a license as physical therapists at times and places *the board determines*. The examinations shall embrace subjects the board *considers* necessary to determine the applicant's fitness."

Section 246. Section 66-2507, R.C.M. 1947, is amended to read as follows:

"66-2507. **Issuance of license — certificate as evidence.** The *department* shall license as a physical therapist each applicant who proves to the satisfaction of the board his fitness for a license under this act. *The department* shall issue to each person licensed a license certificate, which *is* prima facie evidence of the right of the person to whom it is issued to represent himself as a licensed physical therapist, subject to the conditions and limitations of *this act*."

Section 247. Section 66-2508, R.C.M. 1947, is amended to read as follows:

"66-2508. **Annual renewal of license.** A licensed physical therapist shall, during January, apply to the *department* for a *renewal* of his license and pay a fee of five dollars (\$5). A license that is not *renewed* before April, every year, automatically *lapses*. The board may in its discretion revive and *renew* a lapsed license on the payment of all past unpaid *renewal fees*."

Section 248. Section 66-2510, R.C.M. 1947, is amended to read as follows:

"66-2510. **Temporary licenses.** On payment to the *department* of a fee of ten dollars (\$10), and the submission of a written application on

forms provided by it, the *department* shall issue without examination a temporary license to practice physical therapy in this state for a period not to exceed one (1) year to a person who meets the qualifications set forth in section 66-2502, on submission by *the* person of evidence satisfactory to the board that he is in this state on a temporary basis to assist in a case of medical emergency or to engage in a special physical therapy project. On the submission of a written application on forms provided by it, the *department* shall also issue a temporary license to a person who has applied for a license under this act and who is, in the judgment of the board, eligible to take the examination provided for in section 66-2502. This temporary license is available to an applicant only with respect to his first application for a license under section 66-2505 and the license expires when the board makes a final determination with respect to the application."

Section 249. Section 66-2514, R.C.M. 1947, is amended to read as follows:

"66-2514. **Rules adopted by board — records of proceedings and licensees.** (1) The board may adopt rules to carry this act into effect. (2) The *department* shall keep a record of *the board's* proceedings under this act and a register of persons licensed under it. The register shall show the name of every living licensed physical therapist, his last known place of business, last known place of residence, and the date and number of his license and certificate as a licensed physical therapist.

(3) The *department* shall, during the month of April every year in which the renewal of licenses is required, compile a list of licensed physical therapists authorized to practice physical therapy in the state and shall mail a copy of that list to *the* superintendent of every known hospital and every person licensed to practice medicine and surgery in the state. An interested person in the state is entitled to obtain a copy of *the* list on application to the *department*, and payment of an amount not in excess of the cost of the list so furnished."

Section 250. Section 66-2602, R.C.M. 1947, is amended to read as follows:

"66-2602. **Purpose of the act.** (1) It is the purpose of this act to reduce and minimize the waste of ground water resources within this state by reasonable regulation and licensing of drillers or makers of water wells in *this state* and to protect the health and general welfare by providing a means for the development of the natural resource of underground water in an orderly, sanitary, and reasonable manner. The reasonable regulation and licensing of drillers or makers of water wells is in the best interest of the public, and the waste of ground water resources through inefficient or incompetent operations of drillers or makers of water wells is prohibited. For the protection of the public and for the conservation of underground water resources, it is necessary that standards be set and maintained to insure that competency in the drilling and making of water wells in this state is obtained."

Section 251. There is a new section to be numbered 66-2602.1, R.C.M. 1947, which reads as follows:

66-2602.1. **Definitions.** Unless the context requires otherwise, in this act:

(1) "Board" means the board of water well contractors, provided for in section 82A-1602.26.

(2) "Department" means the department of professional and occupational licensing, provided for in title 82A, chapter 16.

(3) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of groundwater. The term does not include excavations by backhoe, or otherwise, for recovery and use of surface waters where the depth is twenty-five (25) feet or less, and the term does not include an excavation made for the purpose of obtaining or prospecting for oil, natural gas, minerals, or products of mining or quarrying or for inserting media to repressure oil or natural gas-bearing formations or for storing petroleum, natural gas, or other products.

(4) "Water well contractor" or "contractor" means a person, firm, co-partnership, association, or corporation, who constructs a water well on lands other than his own, for compensation."

Section 252. There is a new section to be numbered 66-2602.2, R.C.M. 1947, which reads as follows:

66-2602.2. **Exceptions.** This act does not apply to:

(1) An individual who drills a water well on land which is owned or leased by him and is used by him for farming, ranching, or agricultural purposes or as his place of abode; or

(2) An individual who performs labor or services for a licensed water well contractor in connection with the drilling of a water well at the direction and under the personal supervision of a licensed water well contractor.

Section 253. Section 66-2604, R.C.M. 1947, is amended to read as follows:

"66-2604. **Board — seal — compensation.**

(1) The board shall have a seal with the *following* words engraved thereon: "*Board of Water Well Contractors.*" This seal shall be affixed to writs, authentication of records, and other official proceedings of the board. The courts of this state shall take judicial notice of *the* seal.

(2) Each persons as may be necessary to perform the duties of the board, either upon a part-time basis or upon a full-time basis, appointed member of the board who is not a *state* employee shall receive, as compensation for his services, twenty dollars (\$20) per day for each day actually engaged in the performance of the duties of his office, including time of travel between his home and the places at which he shall perform such duties, together with mileage and per diem expenses as provided by law. *Employees of the state of Montana who are members of the board* shall receive no extra compensation for their services as members of the board."

Section 254. Section 66-2605, R.C.M. 1947, is amended to read as follows:

"66-2605. **Powers and duties of the board.** (1) The board *may* exercise the authority granted to it by this act.

(2) The board *shall adopt* rules and orders to effectuate this act.

(3) The board *may request the department to* inspect water wells drilled, or *being drilled*, and *the department has* access to *these* at reasonable times.

(4) The board *may, subject to sections 82A-1603 and 82A-1604*, establish a program *for* training water well drillers or prospective water well drillers and apprentices, *to* more effectively carry out this act.

(5) *The rules of the board* shall be compiled in printed form for distribution to interested persons, for which the *department* may charge a fee. *Sums* realized from *these* sales shall be deposited in the earmarked revenue fund for the use of the board, *subject to section 82A-1603(6)*.

(6) The board *shall authorize the department to* issue licenses to qualified water well contractors in this state; cause *examinations* to be made of applicants for licenses; revoke or suspend licenses *for* good cause, after notice and opportunity to be heard; reinstate licenses previously revoked when justification is shown to the satisfaction of the board; and, generally, perform duties which will carry out this act."

Section 255. Section 66-2606, R.C.M. 1947, is amended to read as follows:

"66-2606. **Water well contractor's licenses.** (1) A person desiring to engage in the drilling, making, or construction of one (1) or more wells for underground water in this state shall first file an application with the *department* for a contractor's license, setting out his qualifications, the equipment proposed to be used in *the* contracting, and other *matters* required by the board, *on* forms adopted by the board. The *department* shall charge a fee of one hundred dollars (\$100) for filing *the* application *of a* person. *The* application *shall not be acted on* until *the* fee has been paid. *Fees* collected *under this section* shall be deposited in the earmarked revenue fund for the use of the board, *subject to section 82A-1603(6)*. A license to construct water wells shall be issued to *an* applicant if, in the opinion of the board, *the* applicant is qualified to conduct water well construction operations. In the granting of licenses, the board shall have due regard for the interest of *this* state in the protection of its underground waters.

(2) A temporary water well contractor's license may be issued to a person who, by evidence satisfactory to the board, is found to possess the qualifications numbered (a) through (f) in section 66-2608(1) and who has applied for *a* license *under* this act. *The* temporary license *entitles* the holder to engage in the business of drilling, making, or *constructing* water wells until the time of the next examination given *under section 86-2608*. *On the* applicant's successfully meeting the board's requirements *on* examination, the temporary license shall be returned to the *department* and a regular license issued. *If* the holder of a temporary license *fails*,

after notice of the holding of *an* examination, to submit himself for examination or to meet the board's requirements, *the* temporary license expires and *shall* be returned to the *department* for cancellation."

Section 256. Section 66-2607, R.C.M. 1947, is amended to read as follows:

"66-2607. **License year.** The term for licenses issued under this act is from July 1 of each year through the following June 30. After the payment of the initial fee *under* section 66-2606 a licensee shall pay, before the first day of each license year, a renewal fee of twenty-five dollars (\$25). If a licensee *does not apply* for renewal of his license before the first day of a license year, and *remit* to the *department* the renewal fee, he shall have his license suspended by the board; and, if *the* license remains suspended for a period of more than thirty (30) days after the first day of a license year, it shall be revoked by the board. *However*, the *department*, prior to *this* revocation, shall notify the licensee of *the board's* intention to revoke at least ten (10) days prior to the time set for action to be taken by the board on *the* license, by mailing notice to the licensee at the address appearing for *the* licensee in the records and files of the *department*. A license, once revoked, may not be reinstated unless it *appears* that an injustice has occurred indicating to the board that the licensee was not guilty of negligence or laches. A person whose license has been revoked, through his own fault, if he desires to engage in the business of water well drilling in this state, or contracting therefor, must *apply under* section 66-2606. Notice of suspension shall be given a licensee when *the* suspension occurs."

Section 257. Section 66-2608, R.C.M. 1947, is amended to read as follows:

"66-2608. **Examination and qualifications.** (1) Under rules pertaining to the business of drilling and contracting for drilling of water wells *which* the board *adopts*, *the department* shall, *subject to section 82A-1603(4)*, *inquire* by examination or otherwise, into the qualifications of applicants for licenses to drill or make wells for *the* production of underground waters in this state. Examinations may be oral, written, or both. The qualifications required by the board are: (a) *familiar* knowledge of ground water laws of *this state* and sanitary standards for water well drilling and construction of water wells; (b) knowledge of types of water well construction; (c) knowledge of types of drilling tools and their uses; (d) knowledge of underground geology in its relation to well construction; (e) possession of adequate equipment by the applicant to complete satisfactory water wells under the standards of the board; (f) financial responsibility of the applicant; (g) successful completion of an examination given by *the department*.

(2) *The department shall give examinations* at times and places the board *determines*. Failure of an applicant to successfully complete *the* examination *disqualifies* him from making further application for a period of six (6) months. The board shall act within a reasonable time on applications for licenses. An application shall be accompanied by the initial fee, and failure to successfully meet the requirements of the board *does not entitle the* applicant to a refund of *the* fee."

Section 258. Section 66-2609, R.C.M. 1947, is amended to read as follows:

"66-2609. **Bond to be required.** The *department*, on issuance of a license *under this act* shall, before *the* person commences operations *in this* state require a good and sufficient surety bond, to be approved by the board, in the penal sum of one thousand dollars (\$1,000), conditioned that *the* licensee will comply with the rules of the board and reasonable requirements made by the board in connection with the drilling of *an* individual well."

Section 259. Section 66-2610, R.C.M. 1947, is amended to read as follows:

"66-2610. **Revocation and suspension.** (1) A license issued *under this act* may be suspended or revoked by the board, in cases other than failure of a licensee to renew *the* license, after notice and hearing, in the event the licensee *has* violated *a* condition of the bond maintained by him as a prerequisite to issuance of *the* license, for the practice of fraud or deceit in obtaining a license, for gross negligence, incompetence, conviction of a felony, or violating the requirements of this act. Any person may make complaint against *a* licensee. *Complaints* shall be in writing, signed by the complainant, and must specify the charges against *the* licensee. The board, on its own motion, *or on receipt of a complaint*, shall hold *a* hearing *on* charges.

(2) A person bringing the complaint *has* the burden of proof and must appear in person. A unanimous vote of the board *is* required in order to revoke or suspend a license. *If* a suspension is directed by the board, it *may* not be for a period in excess of one (1) year."

Section 260. Section 66-2701, R.C.M. 1947, is amended to read as follows:

"66-2701. **Definitions.** *Unless the context requires otherwise*, in this act:

(1) "Board" means the board of morticians, *provided for in section 82A-1602.16.*

(2) "Funeral directing" includes

- (a) *Supervising* funerals,
- (b) *Preparing* dead bodies for burial other than by embalming,
- (c) *Maintaining* a mortuary for the preparation, disposition, or care of dead human bodies, and

(d) *The* holding out to the public that one is a funeral director or undertaker.

(3) "Embalming" means the preservation and disinfection of the dead human body by application of chemicals externally, internally, or both.

(4) "Mortuary science" is the profession or practice of funeral directing and embalming.

(5) A "mortician" is a person licensed under *this act* to practice mortuary science.

(6) A "mortuary" is a place of business used for the care and preparation for burial or transportation of dead human bodies, or a place where a person represents himself as engaged in the profession of mortuary science or funeral directing.

(7) "*Department*" means the department of professional and occupational licensing, provided for in Title 82A, chapter 16."

Section 261. Section 66-2702, R.C.M. 1947, is renumbered 82A-1602.16, and is amended to read as follows:

**"82A-1602.16. Board of morticians — appointment — qualifications — term.** (1) There is a board of morticians.

(2) *The board consists of five (5) members appointed by the governor, with the consent of the senate. Each member shall be a licensed mortician.*

(3) *Each member shall serve for a term of five (5) years."*

Section 262. Section 66-2703, R.C.M. 1947, is amended to read as follows:

**"66-2703. Officers of board — compensation of members.** The board shall elect a chairman, secretary-treasurer, and other necessary officers. Board members shall serve without compensation but shall be reimbursed for actual and necessary expenses incurred in attending meetings or in the discharge of other board duties."

Section 263. Section 66-2706, R.C.M. 1947, is amended to read as follows:

**"66-2706. Disposition of fees.** *Money collected by the department under this act shall be deposited for the use of the board, subject to section 82A-1603(6)."*

Section 264. Section 66-2707, R.C.M. 1947, is amended to read as follows:

**"66-2707. Funeral directing.** The practice of funeral directing is prohibited by anyone who does not hold a funeral director's license or a mortician's license issued by the *department*. A person licensed to practice funeral directing on June 1, 1963 is entitled to an annual renewal of his license on payment of an annual license fee to the *department* on July 1 of each year. The amount of the annual license fee shall be set by the board but *may not exceed five dollars (\$5)*. A funeral director's license *may not be issued to a person who is not licensed by the board of embalmers and funeral directors to practice funeral directing on June 1, 1963."*

Section 265. Section 66-2708, R.C.M. 1947, is amended to read as follows:

**"66-2708. Embalming and mortuary science — qualifications for mortician's license.** The practice of embalming or mortuary science is prohibited by anyone who does not hold a mortician's license issued by the *department*. To qualify for a mortician's license a person must:

(1) Be of good moral character.



(2) Have graduated from an accredited college of mortuary science, and have satisfactorily completed two (2) academic years at an accredited college or university.

(3) Pass an examination prescribed by the board.

(4) Serve a one (1) year internship under the supervision of a mortician in a licensed mortuary in Montana."

Section 266. Section 66-2709, R.C.M. 1947, is amended to read as follows:

"66-2709. **Examination for morticians.** A person possessing the necessary qualifications may apply to the *department* for a license and on payment of an application fee of twenty-five *dollars* (\$25), may take the examination prescribed by the board. The examination shall be held on the second Wednesday of July each year in Helena and at such other times and places as the board *considers* necessary."

Section 267. Section 66-2711, R.C.M. 1947, is amended to read as follows:

"66-2711. **Mortician's license — fee and renewal.** (1) The annual license fee for a mortician's license must be postmarked before July 1 of the assessment year. The amount of the annual license fee shall be set by the board but *may* not exceed ten dollars (\$10). A person holding a license issued by the board of embalmers and funeral directors to practice embalming on June 1, 1963 may, within two (2) years of *this* date, apply for and receive a mortician's license on payment of the license fee.

(2) Failure to pay the annual license fee *results* in automatic suspension of the license. The license may be reinstated by the payment of unpaid license fees plus a penalty of twenty-five dollars (\$25)."

Section 268. Section 66-2715, R.C.M. 1947, is amended to read as follows:

"66-2715. **Hearing and notice — revocation and suspension of licenses.** No action to suspend, revoke, or cancel a license *may* be taken by the board until the accused has been *given notice and a hearing on* the charges. If, *at* the hearing, the board finds the charges true, it may revoke or suspend the license of the accused person."

Section 269. Section 66-2802, R.C.M. 1947, is amended to read as follows:

"66-2802. **Purpose.** (1) The purpose of this act is to protect the health and safety of the people of *this state* from the danger of electrically caused shocks, fires, and explosions; to protect property from the hazard of electrically caused fires and explosions; to establish a procedure for determining where and by whom electrical installations are to be made; to assure the public that persons making electrical installations are qualified; and *to insure* that the electrical installations and electrical products made and sold *in* this state meet minimum safety standards. *All* installations in *this* state of wires and equipment to convey electric current and installations of apparatus to be operated by current, except as

provided in section 66-2812, shall be made substantially in accord with the National Electrical Code, as approved by the American standards association, relating to *this* work as far as *it* covers fire and personal injury hazards, and as the National Electrical Code shall be amended. The standards as set forth in *the* National Electrical Code shall be prima facie evidence of minimum approved methods of construction for safety to life and property. The affirmative vote of a majority of all appointed members of the board shall be required to set any standards that are more stringent than those set forth in the National Electrical Code.

(2) Rules and standards relating to buildings and equipment covered by the state or a municipal building code are not effective until approved by the *department of administration* and filed with the secretary of state."

Section 270. Section 66-2803, R.C.M. 1947, is amended to read as follows:

"66-2803. **Definitions.** *Unless the context requires otherwise, in this act:* (1) "*Master* electrician" means a person having the necessary qualifications, training, experience, and technical knowledge to properly plan, lay out, and supervise the installation and repair of wiring apparatus and equipment for electric light, heat, power, and other purposes *under the rules governing this work.*

(2) "*Journeyman* electrician" means a person having the necessary qualifications, training, experience, and technical knowledge to wire for, install, and repair electrical apparatus and equipment for light, heat, power, and other purposes, *under the rules governing this work.*

(3) "*Electrical contractor*" means *a* person, firm, copartnership, corporation, association, or combination of *these*, who undertakes or offers to undertake for another the planning, laying out, supervising, and installing or the making of additions, alterations, and repairs in the installation of wiring apparatus and equipment for electric light, heat, and power. A registered electrical engineer who plans or designs electrical installations *is not an electrical contractor.*

(4) "*Board*" means the state electrical board, provided for in section 82A-1602.10.

(5) "*Department*" means the department of professional and occupational licensing, provided for in Title 82A, chapter 16."

Section 271. Section 66-2804, R.C.M. 1947, is renumbered 82A-1602.10, and is amended to read as follows:

"82A-1602.10. **State electrical board.** (1) There is a *state electrical board.*

(2) The board *consists of five (5) members*, appointed by the governor, with the consent of the senate, who shall be residents of *this* state. One (1) member of the board shall represent the public. One (1) member of the board shall be selected from each of the following four (4) groups, *from three (3) names submitted by each group:*

- (a) *Consumer* members of rural electric cooperatives;
- (b) *Master* licensed electrical contractors;
- (c) *Licensed* journeyman electricians; and
- (d) *Investor-owned* electric utilities.

(3) *The members of the board shall serve for a term of five (5) years with their terms of office so arranged that one (1) term expires on July 1 of each year.*

(4) *Each member of the board shall receive twenty-five dollars (\$25) per day for each day served in the discharge of his duties, together with the actual and necessary expenses incurred in the performance of his duties.*

(5) *A majority of the members of the board shall constitute a quorum for transaction of business."*

Section 272. Section 66-2805, R.C.M. 1947, is amended to read as follows:

**"66-2805. Meetings — powers — compensation.** (1) *The board shall annually in the month of July, elect from its membership a president, vice-president, and secretary-treasurer. The board shall meet quarterly and at such other times it considers necessary.*

(2) *The board may:*

(a) *Adopt rules for the administration of this act and for the licensing of electrical contractors and the examination and licensing of master and journeymen electricians.*

(b) *Adopt a seal;*

(c) *Cause the prosecution and enjoinder of persons violating this act;*

(d) *Suspend or revoke a license granted under this act for any of the following reasons:*

(i) *Violation of this act, the national electrical code, or the rules of the board;*

(ii) *Any cause for which issuance of the license could have been denied had it existed and been known to the board;*

(iii) *Commission of any act of gross negligence, incompetency, or misconduct as may be determined by the board in the practice of a master or journeyman electrician or the business of an electrical contractor; or*

(iv) *Making a material misstatement, misrepresentation or fraud in obtaining a license.*

(3) *Each member of the board shall receive actual and necessary expenses incurred in the performance of his duties."*

Section 273. There is a new section to be numbered 66-2805.1, R.C.M. 1947, which reads as follows:

**66-2805.1. Department — inspections — tags.** (1) *The department shall make inspections of electrical installations, issue inspection tags for these installations, and establish and charge a reasonable and uniform fee for the inspections, which may not exceed the expense of providing the inspection.*

(2) *Individuals, firms, cooperatives, corporations, or municipalities*

selling electricity are power suppliers. Power suppliers may not connect with or energize an electrical installation, under this act, unless the owner or a licensed electrical contractor has delivered to the power supplier an inspection tag covering the installation, issued by the department.

(3) Immediately after an installation has been energized, the power supplier shall deliver to the department the inspection tag covering the installation.

(4) It is unlawful for a person, partnership, company, firm, association, or corporation, other than a power supplier, to energize an electrical installation under this act, unless an application for an inspection tag covering the installation, together with the inspection fee, has been forwarded to the department.

Section 274. Section 66-2806, R.C.M. 1947, is amended to read as follows:

**"66-2806. Electrician must have license.** A person *may not* engage in or work at the business, trade, or calling of electrical contractor, journeyman electrician, or master electrician in this state, until he *has* received from the *department* a license or permit to work as an electrical contractor, journeyman electrician, or master electrician."

Section 275. Section 66-2807, R.C.M. 1947, is amended to read as follows:

**"66-2807. License requirements. (1) Master electrician's license:**

(a) An applicant for a master electrician's license shall furnish written evidence that he is a graduate electrical engineer of an accredited college or university and has one (1) year of practical electrical experience, or that he is a graduate of an electrical trade school and has at least four (4) years of practical experience in electrical work, or that he has had at least five (5) years' practical experience in planning, laying out, supervising, or installing wiring, apparatus, or equipment for electrical light, heat, and power. Applicants for license as a master electrician shall file an application on forms *prescribed by the board* and furnished by the *department* together with the examination fee. The board shall, not less than thirty (30) days prior to a scheduled written examination, notify each applicant that the evidence submitted with his application is sufficient to qualify him to take *the* written examination or that *the* evidence is insufficient and is rejected. *If* the application is rejected the board shall set forth the reasons in the notice to the applicant, and shall *authorize the department* to return *the* applicant's examination fee. The place of examinations shall be designated by the board and examinations shall be held *at least* once a year and at other times as, in the opinion of the board, the number of applicants warrants.

(b) The written examination shall consist of at least thirty (30) questions designed to fairly test the applicant's knowledge and *his* technical application in the following subjects:

- (i) The National Electrical Code;
- (ii) Cost estimating for electrical installments;

(iii) Procurement and handling of materials needed for electrical installations and repair;

(iv) Reading of blueprints for electrical work;

(v) Drafting and layout of electrical circuits;

(vi) Knowledge of practical electrical theory.

(2) *Journeyman electrician's license:*

(a) An applicant for a journeyman electrician's license shall furnish written evidence that he has had at least four (4) years apprenticeship in the electrical trade or four (4) years practical experience in the wiring for, installing, and repairing of electrical apparatus and equipment for light, heat, and power. Applications for license and notice to the applicant shall be made and given as in the case of master electricians' licenses.

(b) The written examination for a journeyman's license shall consist of at least thirty (30) questions designed to fairly test the applicant's knowledge and the technical application thereof in the following subjects:

(i) The Ohms law;

(ii) The National Electrical Code;

(iii) Layout and practical installation of electrical circuits.

(3) To insure impartiality, the examination *for either license* shall be by numbers drawn by lot. A paper *may not* be marked *with* the name of *an* applicant but shall be anonymously graded by the *department*, *subject to section 82A-1603*. The examination passing grade *is* seventy-five percent (75%). If *it is* determined that the applicant has passed the examination, the *department*, *on* payment by the applicant of the fee, shall issue to the applicant a license which *authorizes* him to engage in the business, trade, or calling of a journeyman electrician or master electrician. Each original license *expires* on July 15 which is at least one (1) year but not more than two (2) years subsequent to the date of issuance.

(4) *Licenses* of journeyman electricians or master electricians, unless *they* have been suspended or revoked by the board, shall be renewed for a period of one (1) year by the *department* *on* application for renewal made to the *department* prior to July 15 of the year in which the prior license expired and *on* the payment of an annual renewal fee. If application for renewal is not made prior to July 15, an additional fee of five dollars (\$5) shall be paid on account of *the* delinquency in renewal. *All* applications for renewal must be made prior to August 15 of that year, otherwise the license *is* forfeited, and *the* applicant *is* required to pass the examination and pay the fees required of applicants for original licenses."

Section 276. Section 66-2809, R.C.M. 1947, is amended to read as follows:

"66-2809. **License to nonresidents — reciprocity.** To the extent that other states, which provide for the licensing of electricians, provide for similar action, the board may grant licenses to electricians licensed by other states, *on* payment by the applicant of the required fee and *on* fur-

nishing proof to the board that the applicant has qualifications at least equal to those provided herein for applicants for written examinations. Applicants who qualify for a license under this section are not required to take a written examination."

Section 277. Section 66-2810, R.C.M. 1947, is amended to read as follows:

"66-2810. **Temporary permits.** The board may *authorize the department* to issue temporary permits to engage in the work of a master electrician or journeyman electrician to *an* applicant who furnishes evidence satisfactory to the board that he has the required experience to qualify for the examination and who pays the fee. Temporary permits continue in effect only until the next examination is given and may be revoked by the board at any time. If the applicant is granted a license, *a* fee paid for the temporary permit shall be applied to the fee required for a license."

Section 278. Section 66-2811, R.C.M. 1947, is amended to read as follows:

"66-2811. **License without written examination.** The board may *authorize the department* to issue a license as a master electrician or journeyman electrician to *an* applicant without written examination *on* satisfactory proof that *the* applicant has the qualifications to apply for a license under this act and is the holder of a valid license issued by *a* city or other political subdivision of *this* state *which provides* for the examination and licensing of electricians."

Section 279. Section 66-2814, R.C.M. 1947, is amended to read as follows:

"66-2814. **Fees.** Each electrical contractor shall, before July 1 of each year, file with the *department* an application in writing for each firm operated by him in *this* state to obtain a license. A license *may not* be issued until the applicant meets the requirements and has paid to the *department* a license fee of seventy-five dollars (\$75) for each firm operated by him. *Licenses* shall bear the date of issue and expire on July 1 following the date of issue. *An* electrical contractor licensed under this act *is* entitled to have his license renewed for the ensuing year by payment to the *department* of a fee of seventy-five dollars (\$75) before the date of expiration of *the* license."

Section 280. Section 66-2815, R.C.M. 1947, is amended to read as follows:

"66-2815. **Examination fees.** *Master* electricians *who are* not electrical contractors and journeyman electricians *installing* or intending to *install* for hire electric wiring or equipment to convey electric current, or apparatus to be operated by *this* current, shall make application for a license to the *department*. The application shall be on a form furnished by the *department* and accompanied by an examination fee of ten dollars (\$10). The forms shall state the applicant's full name, his address, the extent of his experience, and other information required by the board. *If the applicant has complied* with the rules *adopted* by the board and, being qualified, *has successfully completed* the examination, he shall pay to the

*department* an annual license fee of: twenty-five dollars (\$25) for a master electrician's license; or ten dollars (\$10) for a journeyman electrician's license, and upon receipt of either fee, *the department shall issue the proper license to the applicant.* A person serving a four (4) year electrician apprenticeship under the supervision of a licensed electrician is exempt from the licensing provision of this section during training. *Credit* for the time spent in an electrical school shall be given to the master electrician, journeyman electrician, or apprentice, up to a total of two (2) years on the four (4) year requirement."

Section 281. Section 66-2817, R.C.M. 1947, is amended to read as follows:

"66-2817. **Apprentices — rules — record kept by department.** *This act does not prohibit a person from working as an apprentice in the trade of electrician with an electrician licensed under this act, and under rules made by the board. The name and residence of each apprentice, and the names and residences of their employers, shall be filed with the department, and a record shall be kept by the department, showing the names and residences of these apprentices.*"

Section 282. Section 66-2819, R.C.M. 1947, is amended to read as follows:

"66-2819. **Disposition of fees.** *Money collected by the department under this act shall be deposited in the earmarked revenue fund, for the use of the board, subject to section 82A-1603(6).*"

Section 283. Section 66-2902, R.C.M. 1947, is amended to read as follows:

"66-2902. **Definitions.** *Unless the context requires otherwise, in this act:*

(1) *"Masseur" includes persons engaged in the occupation of massage and includes the feminine "masseuse."*

(2) *"Massage" means the trained ability of body massage by hands for the purpose of body massage, the use of oil rubs, salt glows, hot and cold packs, tub, shower or cabinet baths; and the application to the patron by the operator's hands by variations of touch, stroking, friction, kneading, vibration, percussion, and gymnastics.*

(3) *"Massage establishment" means a place in which any of the above procedures and methods are administered or used.*

(4) *"Board" means the board of massage therapists, provided for in section 82A-1602.14.*

(5) *"Department" means the department of professional and occupational licensing, provided for in Title 82A, chapter 16."*

Section 284. Section 66-2903, R.C.M. 1947, is renumbered 82A-1602.14, and is amended to read as follows:

"82A-1602.14. **Board of massage therapists — appointment — qualifications — term.** (1) *There is a board of massage therapists.*

(2) *The board consists of three (3) members appointed by the governor. Each member shall be a resident of this state, and shall have been a masseur continuously in this state for at least one (1) year. Each member shall have integrity and ability as a masseur.*

(3) *Each member shall serve for a term of three (3) years."*

Section 285. Section 66-2904, R.C.M. 1947, is amended to read as follows:

**"66-2904. Organization of board — meetings — powers and duties.** (1) *The board shall annually elect a president, vice-president, and secretary-treasurer from its membership.*

(2) *The board shall hold one (1) regular meeting each year, at the city of Helena, Montana, and shall hold special meetings at times and places a majority of the board designates; however, not more than four (4) meetings may be held in any one (1) year. A majority of the board constitutes a quorum.*

(3) *The board may administer oaths, take affidavits, summon witnesses, and take testimony as to matters within the scope of the power of the board. It shall adopt a seal, which shall be affixed to licenses issued, and may adopt rules it considers proper and necessary for the performance of its duties, and shall adopt a schedule of minimum educational requirements, not inconsistent with this law, which shall be without prejudice, partiality, or discrimination as to the different schools of massage training. The department shall keep a record of the proceedings of the board, which shall at all times be open to public inspection."*

Section 286. Section 66-2905, R.C.M. 1947, is amended to read as follows:

**"66-2905. Practicing without a license — license without examination.** (1) *It is unlawful for a person to engage in the occupation of massage in this state without first obtaining a license under this act.*

(2) *When application for examination for license is filed with the department the board may authorize the department to issue to the applicant a temporary permit to engage in the occupation of massage, which is good until the next meeting of the board."*

Section 287. Section 66-2906, R.C.M. 1947, is amended to read as follows:

**"66-2906. Application and fees for license.** (1) *A person wishing to engage in the occupation of a masseur in this state shall make application to the department on the form and in the manner prescribed by the board, at least fifteen (15) days prior to a meeting of the board. Each applicant shall hold a diploma or credentials issued by a recognized, approved school of massage or similar institution, certifying not less than one thousand (1,000) hours of study satisfactory to the school. Application shall be in writing and sworn to by some officer authorized to administer oaths, and shall recite the history of the applicant's educational qualifications, how long he has studied massage, from what school he holds a certificate, and the length of time he has engaged in the occupation of massage, accom-*



panying *this* with proof by a diploma or certificate and with satisfactory evidence of good character and reputation.

(2) There shall be paid to the *department*, by *an* applicant for a license, a fee of thirty-five dollars (\$35) which shall accompany the application. *An* applicant failing to pass *the* requirements *is* entitled within six (6) months to a re-examination *on* payment of an additional fee of ten dollars (\$10), but *on* a third failure may not reapply."

Section 288. Section 66-2907, R.C.M. 1947, is amended to read as follows:

"66-2907. **Examinations.** (1) Examinations for licenses to engage in the occupation of massage shall be made by the *department*, *subject to section 82A-1603*, and according to the method *considered by the board* to be the most practicable and expeditious to test the applicant's qualifications.

(2) *Examinations* shall be in writing, and in addition each applicant shall pass a reasonable demonstrative and oral examination. Minimum requirements *are* a general average in *the* examination of seventy-five percent (75%) in all subjects and not less than fifty percent (50%) in any one (1) subject. In addition to *the* subjects as may be designated by the board, the examination shall include principles of sanitation and hygiene."

Section 289. Section 66-2908, R.C.M. 1947, is amended to read as follows:

"66-2908. **Denial or revocation of license.** The board may, after hearing, *deny*, revoke or *refuse* to renew a license *under* this act to a person, otherwise qualified, who obtained *the* license by fraudulent representation, for incompetency in practice, for use of untruthful or improbable statements to patrons or in his advertisements, for habitual intoxication or for unprofessional and immoral conduct. *The* board may *authorize the department* to reissue a license after a lapse of not less than six (6) months, if in *the board's* judgment, *the* act or conditions of disqualification have been remedied. *It is* a violation of this act for a person engaged in the occupation of a masseur to advertise or assert as a licensee under this act that *he diagnoses or treats* a disease, injury, or illness."

Section 290. Section 66-2909, R.C.M. 1947, is amended to read as follows:

"66-2909. **Renewal of license.** A license *expires* on December 31 of each year and shall be renewed then or thereafter, by the *department*, *on* payment of a renewal fee of not less than ten dollars (\$10) or more than twenty-five dollars (\$25), as set by the board."

Section 291. Section 66-2910, R.C.M. 1947, is amended to read as follows:

"66-2910. **Disposition of fees — receipts and disbursements.** (1) *Examination* and renewal fees received by the *department* under this act shall be *deposited* in the earmarked revenue fund *for the use* of the board, *subject to section 82A-1603(6)*.

(2) The *department* shall keep *an* accurate account of funds received and vouchers issued.

(3) The members of *the* board shall receive a per diem of fifteen dollars (\$15) for each day during which they *are* actually engaged in the discharge of their duties, and mileage *as provided in section 59-801* for each mile necessarily traveled in going to and from *a* meeting of *the* board.

(4) Per diem, mileage, and other expenses necessarily connected with *the* board shall be paid only out of the earmarked revenue fund."

Section 292. Section 66-3003, R.C.M. 1947, is amended to read as follows:

"66-3003. **Definitions.** *Unless the context requires otherwise, in this act:*

(1) "Board" means the board of hearing aid dispensers, *provided for in section 82A-1602.12.*

(2) "License" means a regular or temporary license.

(3) "Hearing aid" means *an* instrument or device designed for or represented as aiding or improving defective human hearing and parts, attachments, or accessories of *the* instrument or device.

(4) "Practice of dispensing and fitting hearing aids" means the evaluation or measurement of the powers or range of human hearing by means of an audiometer and a visual examination of the ear and canal or by any other means devised and the consequent selection, adaption, or sale of hearing aids intended to compensate for hearing loss, including eyeglass hearing aids and their fittings, and the making of an impression of the ear, but *does not* include batteries, cords, or accessories.

(5) "*Department*" means *the department of professional and occupational licensing, provided for in Title 82A, chapter 16.*"

Section 293. Section 66-3004, R.C.M. 1947, is renumbered 82A-1602.12, and is amended to read as follows:

"82A-1602.12. **Board of hearing aid dispensers — appointment — qualifications — term.** (1) *There is a board of hearing aid dispensers.*

(2) *The board consists of five (5) members appointed by the governor. The members are:*

(a) *One (1) member appointed from a list submitted by the Montana academy of oto-ophthalmology. This member shall hold or be eligible for a certificate of qualification from the American board of otolaryngology.*

(b) *One (1) member appointed from a list submitted by the Montana speech and hearing association. This member shall hold or be eligible for a certificate of clinical competence in audiology from the American speech and hearing association.*

(c) *Three (3) members appointed from a list submitted by the Montana hearing aid dealers' society. These members shall have been qualified dispensers and fitters of hearing aids for at least five (5) years before their appointment to the board.*

*(d) One (1) alternate member shall be appointed from each of the three (3) lists to serve when a regular member cannot attend a scheduled meeting.*

*(3) Each member shall serve for a term of three (3) years. A member may not be reappointed within one (1) year after the expiration of his second consecutive full term. If a vacancy occurs on the board, the governor shall appoint a person from the same list as the member whose term was not completed."*

Section 294. Section 66-3005, R.C.M. 1947, is amended to read as follows:

**"66-3005. Powers and duties of board.** The powers and duties of the board are to:

*(1) License* persons who apply and are qualified to practice the fitting of hearing aids;

*(2) Establish* a procedure to act as a grievance board to receive, investigate, and mediate complaints from any source concerning the activities of persons licensed under this act, or their agents whether licensed or not;

*(3) Suspend* or revoke licenses *under* this act;

*(4) Designate* the time and place for examining applicants for license;

*(5) Adopt* rules necessary to carry out this act;

*(6) Require* the periodic inspection and calibration of audiometric testing equipment and carry out periodic inspections of facilities of persons who practice the fitting or selling of hearing aids;

*(7) Prepare* examinations required by the act;

*(8) Initiate* legal action to enjoin from operation a person or corporation engaged in the sale and fitting of hearing aids in *this state*, who is not licensed under this act."

Section 295. Section 66-3006, R.C.M. 1947, is amended to read as follows:

**"66-3006. Meeting place and time — quorum.** *(1)* The board shall meet at least once each year at a place and time determined by the chairman and at other times and places specified by the chairman to carry out this act. Three (3) members, including either the otolaryngologist or the audiologist, constitute a quorum.

*(2) Members of the board shall annually designate one (1) member to serve as chairman and another member to serve as secretary-treasurer."*

Section 296. Section 66-3007, R.C.M. 1947, is amended to read as follows:

**"66-3007. License required to dispense and fit hearing aids.** A person *may not* engage in the sale or practice of dispensing and fitting hearing aids or display a sign or in any other way advertise or hold him-

self out as a person who practices the dispensing and fitting of hearing aids unless he holds a current regular or temporary license issued by the *department*."

Section 297. Section 66-3009, R.C.M. 1947, is amended to read as follows:

"66-3009. **Exclusions.** (1) This act does not apply to a person who is a physician licensed to practice by the *Montana state* board of medical examiners.

(2) This act does not apply to a person while he is engaged in the practice of fitting hearing aids if his practice is part of the academic curriculum of an accredited institution of higher education, or part of a program conducted by a public agency or by a charitable or nonprofit organization which is primarily supported by voluntary contributions, unless they sell hearing aids."

Section 298. Section 66-3011, R.C.M. 1947, is amended to read as follows:

"66-3011. **Written and practical tests — date of examinations.** (1) An applicant for a license who is notified by the *department* that he has fulfilled the requirements of section 66-3010 shall appear at a time and place *designated* by the board to be examined by written and practical tests in order to demonstrate that he is qualified to practice the fitting of hearing aids.

(2) The *department* shall, *subject to section 82A-1603*, give examinations required to permit applicants to be examined within thirty (30) days following the board's approval of *the* application for examination. Examination may be delayed *on* notice to the *department*, *under* this section."

Section 299. Section 66-3014, R.C.M. 1947, is amended to read as follows:

"66-3014. **Temporary license — qualifications — fee.** (1) An applicant who fulfills the requirements of section 66-3010 and who has not previously applied to take the examination under section 66-3011 may apply to the *department* for a temporary license.

(2) *On* receiving an application under subsection (1) of this section, accompanied by a fee of twenty-five dollars (\$25), the *department* shall issue a temporary license which *entitles* the applicant to practice the fitting and dispensing of hearing aids for a period ending thirty (30) days after the conclusion of the next examination given after the date of issue.

(3) No temporary license *may* be issued by the *department* unless the applicant shows to the satisfaction of the board that he is, or will be, supervised and trained by a person who holds a valid license issued under this act.

(4) If a person who holds a temporary license does not take the next examination given after the date of issue, the temporary license *may* not be renewed, except for a good cause shown to the satisfaction of the board.

(5) If a person who holds a temporary license takes and fails to pass the next examination given after the date of issue, the board may *authorize the department* to renew the temporary license for a period ending thirty (30) days after the results of the next examination given after the dates of renewal are announced. In no event *may* more than two (2) renewals be permitted. The fee for renewal *is* thirty dollars (\$30)."

Section 300. Section 66-3015, R.C.M. 1947, is amended to read as follows:

**"66-3015. Permanent place of business in state necessary — exception — records — notice.** (1) A person who obtains a license to dispense hearing aids as a business must have a permanent place of business in *this* state that will be opened to serve the public, having the necessary testing, fitting and hearing aid accessories needed by the hard of hearing public in the wearing of hearing aids.

(2) Subsection (1) of this section does not apply to persons who obtain a license as sales people representing a licensed hearing aid dispenser.

(3) The *department* shall keep a record of the places of practice of persons who hold a regular license or temporary licenses. A notice required to be given by the board *or department* to a person who holds a regular or temporary license may be given by mailing it to him at the address last given by him to the *department*."

Section 301. Section 66-3016, R.C.M. 1947, is amended to read as follows:

**"66-3016. Annual renewal fee.** A person who practices the fitting of hearing aids shall annually pay to the *department* a fee of fifty dollars (\$50) for a renewal of his license. A thirty (30) day grace period *is* allowed after expiration of a license, during which it may be renewed on payment of a fee of fifty-five dollars (\$55) to the *department*. After the expiration of the grace period, the board may *authorize the department* to renew a license on payment of sixty dollars (\$60) to the *department*. A person who applies for renewal, whose license was suspended for failure to renew, *is not* required to submit to *an* examination as a condition of renewal for a three (3) year period after suspension."

Section 302. Section 66-3019, R.C.M. 1947, is amended to read as follows:

**"66-3019. Reciprocity — examination unnecessary — fee.** *When* the board determines that another state or jurisdiction has requirements equivalent to or higher than those in effect *under* this act for the practice of *fitting and selling* hearing aids, and that *the* state or jurisdiction has a program equivalent to or stricter than the program for determining whether applicants *under* this act are qualified to dispense and fit hearing aids, the board may *authorize the department* to issue a license to applicants who hold current, unsuspended and unrevoked licenses to fit and sell hearing aids in *the* other state or jurisdiction. No such applicants for a license *under* this *section* *are* required to submit to or undergo a qualifying examination, or the like, other than the payment of fees, *if* the person complies with all other requirements of this act."

Section 303. Section 66-3020, R.C.M. 1947, is amended to read as follows:

**"66-3020. Deposit of fees in earmarked revenue fund — per diem and travel expenses.** (1) *Fees collected by the department under this act shall be deposited in the earmarked revenue fund for the use of the board, subject to section 82A-1603(6).*

(2) Each member of the board shall receive twenty dollars (\$20) per diem when actually engaged in the discharge of his official duty, and in addition shall also be reimbursed for reasonable and necessary travel expense in attending a meeting of the board in the state."

Section 304. Section 66-3022, R.C.M. 1947, is amended to read as follows:

**"66-3022. Licensee entitled to disciplinary hearing if duly requested — right to appeal.** (1) No license issued under this act may be suspended, revoked, denied, or renewal denied without notice and a hearing, if requested by the applicant."

Section 305. Section 66-3101, R.C.M. 1947, is amended to read as follows:

**"66-3101. Definitions.** *Unless the context requires otherwise, in this act.*

(1) *"Board"* means the board of nursing home administrators, provided for in section 82A-1602.

(2) *"Nursing home administrator"* means a person who administers, manages, supervises, or is in general administrative charge of a long-term care facility, whether the individual has an ownership interest in the facility, and whether his functions and duties are shared with one or more individuals.

(3) *"Long-term care facility"* means any skilled nursing facility, nursing home or intermediate care facility as defined for licensing purposes under state law or the rules for long-term care facilities of the department of health and environmental sciences, whether proprietary or nonprofit, including facilities owned or administered by the state or a political subdivision.

(4) *"Inactive nursing home administrator"* means an individual who has been licensed in this state as a nursing home administrator, and whose license has not been revoked or suspended but who is not actively engaged in nursing home administration.

(5) *"Department"* means the department of professional and occupational licensing, provided for in Title 82A, chapter 16."

Section 306. Section 66-3102, R.C.M. 1947, is renumbered 82A-1602.17, and is amended to read as follows:

**"82A-1602.17. Board of nursing home administrators — appointment — qualifications — term — removal.** (1) There is a board of nursing home administrators.

(2) *The board consists of five (5) voting members appointed by the governor. No more than two (2) members shall be nursing home administrators. The other three (3) members shall be representatives of professions or institutions concerned with the care of chronically ill and infirm aged patients. No two (2) of the latter shall be from the same profession and none may have a financial interest in a nursing home.*

(3) *The director of the department of health and environmental sciences, or his designee, and the director of the department of social and rehabilitation services, or his designee, are ex officio, non-voting members of the board.*

(4) *The appointees shall be selected from a list of three (3) nominees submitted for each appointee by the board of directors of the Montana nursing home association, inc.*

(5) *Each appointed member shall serve for a term of five (5) years. Any vacancy occurring in the position of an appointive member shall be filled by the governor for the unexpired term from a list of three (3) names submitted by the board of directors of the Montana nursing home association, inc.*

(6) *Appointive members may be removed by the governor only for cause."*

Section 307. Section 66-3103, R.C.M. 1947, is amended to read as follows:

"66-3103. **Qualifications for licensure.** (1) *The department shall register and issue licenses to qualified persons as nursing home administrators, and the board shall establish qualification criteria for nursing home administrators. No registration or license shall be issued to a person as a nursing home administrator unless:*

(a) *He is of good character, of sound physical and mental health, has received a high school diploma or its equivalent; and*

(b) *Has satisfactorily completed a course of instruction and training prescribed by the board, which shall be designed and administered to present sufficient knowledge of the needs properly served by long-term care facilities; laws governing the operation of long-term care facilities and the protection of the interests of patients; and the elements of good nursing home administration; or have presented evidence satisfactory to the board of sufficient education, training, or experience in the foregoing fields to administer, supervise, and manage a long-term care facility; and*

(c) *Has passed an examination designed to test for competence in the subject matters referred to in subsection (b).*

(2) *The minimum standards for qualification shall comply with the requirements, if any, set forth in Title XIX of the Social Security Act (P.L. 90-248, 1967), as amended."*

Section 308. Section 66-3104, R.C.M. 1947, is amended to read as follows:

"66-3104. **Registration and licensing function.** (1) *The department*

shall register and license nursing home administrators *under the rules adopted by the board*. A nursing home administrator's registration and license is not transferable and is valid until surrendered for cancellation, suspended, or revoked for violation of this act or any other laws or *rules* relating to the proper administration and management of a long-term care facility. Denial of issuance or renewal, suspension, or revocation under this act is subject to review by the board *on the timely written request for review within thirty (30) days*.

(2) If the board determines that preliminary qualifications set forth in 66-3103 (1) and (2), will have been met before the next examination it may *authorize the department to issue a temporary permit for a period of one hundred eighty (180) days or until the scores of the next examination are announced*. No temporary permit *may* be issued to an applicant after the date of the first examination for which he is eligible."

Section 309. Section 66-3106, R.C.M. 1947, is amended to read as follows:

"66-3106. **Deposit of fees.** *Fees collected by the department under this act shall be deposited in the earmarked revenue fund for the use of the board, subject to section 82A-1603(6). This fund may be used to pay the compensation and expenses of members of the board, and other expenses necessary to administer this act.*"

Section 310. Section 66-3109, R.C.M. 1947, is amended to read as follows:

"66-3109. **Duties of the board.** The board shall:

(1) Develop, impose, and enforce standards which must be met by individuals in order to register and receive a license as a nursing home administrator, designed to ensure that nursing home administrators *are* individuals of good character and otherwise suitable, and who, by training or experience in the field of institutional administration, are qualified to serve as nursing home administrators.

(2) Develop and apply appropriate techniques, including examination and investigations, for determining whether individuals meet *the* standards.

(3) *Authorize the department to register and issue licenses to individuals, after application of the techniques, determined to meet the standards, and for cause, after notice and hearing, revoke or suspend licenses previously issued if the individual holding the license is determined substantially to have failed to conform to the requirements of the standards. The board may, in its discretion, defer execution of its order of revocation or suspension for the purpose of permitting continuity of care for patients when the need for this continuity of care outweighs any harm or danger which might result from the failure of the nursing home administrator to be registered and licensed, resulting in the closure of a long-term care facility.*

(4) Establish and implement procedures designed to ensure that individuals registered and licensed as nursing home administrators will, during the period that they serve, comply with the requirements of *the* standards.



(5) On receipt of a written and signed complaint, an investigation of the matter contained in the complaint shall be initiated, *subject to sections 82A-1603 and 82A-1604*. At its next meeting, the complaint shall be presented to the board together with the report of investigation and recommendations and on *this* basis, the board shall determine whether to bring charges and provide for a hearing.

(6) Conduct a continuing study and investigation of nursing home administrators within the state with a view to the improvement of the standards imposed for the licensing of administrators and of procedures and methods for the enforcement of *the* standards with respect to nursing home administrators.

(7) Conduct, or cause to be conducted, one or more courses of instruction and training sufficient to meet the requirements of this act, and make provisions for the conduct of *these* courses and their accessibility to residents of this state, unless it finds that there are *a* sufficient number of courses conducted by others within this state to meet the needs of the state. *Instead*, the board may approve courses conducted within and *outside* of this state sufficient to meet the education and training requirements of this act.

(8) Prescribe or approve continuing education courses."

Section 311. Section 66-3111, R.C.M. 1947, is amended to read as follows:

"66-3111. **Reciprocity.** The *department* may issue at the board's discretion a nursing home administrator's license, without examination, to a person who holds a current license as a nursing home administrator from another jurisdiction, *if* the board finds that the standards for licensure in *the* other jurisdiction are at least *substantially* equivalent of those prevailing in this state, and that the applicant is otherwise qualified."

Section 312. Section 66-3202, R.C.M. 1947, is amended to read as follows:

"66-3202. **Definitions.** *Unless the context requires otherwise*, in this act:

(1) "Accredited college or university" means *a* college or university accredited by the regional accrediting association for institutions of higher learning, such as the Northwest Association of Secondary and Higher Schools.

(2) "Board" means the board of *psychologists*, *provided for in section 82A-1602.27*.

(3) A person represents himself to be a "psychologist" when he holds himself out to the public by *a* title or description of services incorporating the words psychologist, psychological, psychologic, or psychology and offers to render or renders psychological services defined in subsection (4) of this section to individuals, groups, corporations, or the public for compensation or fee.

(4) "Practice of psychology" *means* the application of principles,

methods and procedures of understanding, predicting, and influencing behavior, such as the principles pertaining to learning, perception, motivation, thinking, motions, and interpersonal relationship; the methods and procedures of interviewing, counseling, and behavior modification including psychotherapeutic techniques and hypnosis; and constructing, administering, and interpreting tests of mental abilities, aptitudes, interests, attitudes, personality characteristics, emotions, and motivation.

(5) *"Department" means the department of professional and occupational licensing, provided for in Title 82A, chapter 16."*

Section 313. Section 66-3203, R.C.M. 1947, is amended to read as follows:

**"66-3203. License required to practice psychology — exempt activities.** (1) A person may *not* represent himself to be a psychologist or engage in the practice of psychology unless he is licensed under this act.

(2) *This act does not prevent:*

(a) Qualified members of other professions such as physicians, social workers, lawyers, pastoral counselors, or educators, from doing work of a psychological nature consistent with their training and the codes of ethics of their respective professions if they do not hold themselves out to the public by a title or description incorporating the words "psychology" or "psychologist."

(b) The activities, services, and use of an official title on the part of a person in the employ of a federal, state, county, or municipal agency, or of other political subdivisions, or *an* educational or charitable institution in so far as *these* activities and services are a part of the duties of his office or position with *the* agency or institution.

(c) The activities and services of a student, intern, or resident in psychology, pursuing a course of study at an accredited university or college, or working in a generally recognized training center, if these activities and services constitute a part of his supervised course of study.

(d) The activities and services of a person who is not a resident of this state, in rendering consulting psychological services in *this state* when these services are rendered for a period which does not exceed in the aggregate more than sixty (60) days during a calendar year if the person is authorized under the laws of the state or country of his residence to perform these activities and services; *However, these* persons shall report to the *department* the nature and extent of *the* services in this state if they exceed ten (10) days in a calendar year.

(e) A person authorized by the laws of the state or country of his former residence to perform activities and services, who has recently become a resident of this state, and who has applied for a *license* in *this state*, pending disposition of his application.

(f) The use of the term "social psychologist" by a person who:

(i) Has been graduated with a doctoral degree in sociology or social

psychology from an institution whose credits in sociology or social psychology are acceptable by a recognized educational institution;

(ii) *Has* passed comprehensive examinations in the field of social psychology as part of the requirement for the doctoral degree or who has had equivalent specialized training in social psychology; and

(iii) *Has* filed with the *department* a statement of facts demonstrating his compliance with this subdivision.

(g) The offering of lecture services for a fee by a person exempted from licensing requirements by virtue of his employment.

(h) Activities of a psychological nature on the part of persons who are salaried employees of accredited academic institutions, governmental agencies, research laboratories, and business corporations, *if these* employees are performing *the* duties for which they are employed by *the* organizations, and within the confines of *the* organization."

Section 314. Section 66-3204, R.C.M. 1947, is renumbered 82A-1602.27, and is amended to read as follows:

**"82A-1602.27. Board of psychologists — appointment — qualifications — term."**(1) *There is a board of psychologists.*

(2) *The board consists of three (3) members appointed by the governor. The governor shall appoint all members, including a member filling a vacancy for an unexpired term, from the list of licensed psychologists in this state. A member may not succeed himself, but may be reappointed after three (3) years following the termination of his previous appointment. Each member shall be a citizen of the United States, and a resident of this state.*

(3) *Each member shall serve for a term of three (3) years."*

Section 315. Section 66-3205, R.C.M. 1947, is amended to read as follows:

**"66-3205. Duties of board.** (1) The board shall hold a regular annual meeting in which it shall select from its members a chairman and a secretary. The *department* shall keep a record of *the board's* proceedings. Other regular meetings shall be held at such times as the rules of the board provide. Special meetings may be held at times *considered* necessary or advisable by the chairman and the majority of its members, or *on* the request of the governor. Reasonable notice of meetings shall be given in the manner prescribed by the board. The quorum of the board *consists* of the majority of its members.

(2) Each board member shall receive actual *and* necessary traveling and subsistence expenses incidental to board meetings.

(3) The board may make reasonable and necessary *rules* for the proper performance of its duties and for the regulation of proceedings before it.

(4) The attorney general shall act as attorney for the board. He or his representative may sit as an ex officio member of the board in an advisory capacity only.

(5) The board shall adopt an official seal."

Section 316. Section 66-3206, R.C.M. 1947, is amended to read as follows:

**"66-3206. Examinations and issuance of license — expiration and renewal — publication of list of psychologists.** (1) The *department* shall administer examinations to qualified applicants for licensing at least once a year, *subject to section 82A-1603*. The board shall determine the subject and scope of specialized psychological areas and techniques for examination. Examinations may be written, oral, or both. The board shall determine an acceptable level of performance for each examination.

(2) An applicant who fails his first examination may be re-examined at subsequent examination *on* the payment of another examination fee. An applicant who fails two (2) successive examinations may apply for re-examination after two (2) years of additional professional experience or training.

(3) The *department* shall issue a license to each person who meets the requirements for licensure as prescribed in this act. The license shall include the dates of issuance and expiration and shall bear a serial number. It shall be signed by the secretary of the board under the seal of the board.

(4) The license *expires* on January 1 following the date of its issuance or renewal and is invalid thereafter. The *department* shall notify each person licensed under this act relative to the date of the expiration of his license and the amount of his renewal fee. This notice shall be mailed to each licensed psychologist at his listed address at least one (1) month before the expiration of the license.

(5) Renewal may be made during the sixty (60) days prior to the expiration date by application. Failure on the part of a person licensed to pay his renewal fee by the expiration date does not deprive him of the right to renew his license, but the fee shall be increased ten per cent (10%) for each month or major portion thereof that the payment of the renewal fee is delayed after the expiration date. The maximum fee for delayed renewal *may* not exceed twice the normal renewal fee. Application for renewal following a lapse of one (1) year or more will be subject to review by the board, and the applicant may be requested to complete an examination successfully if the board so determines.

(6) The *department* shall publish yearly a list of psychologists licensed under this act. This list shall contain names and addresses and other information the board *considers* advisable. The *department* shall mail a copy of this list to each person licensed under this act, place a copy on file in the secretary of state's office, and furnish copies to the public, *on request*."

Section 317. Section 66-3208, R.C.M. 1947, is amended to read as follows:

**"66-3208. Qualifications and requirements for licensure — reciprocity.** (1) Application for examination for licensing a psychologist shall be made *on* forms prescribed by the board.

(2) *The* board shall license as a psychologist any person who pays the

prescribed fee, *passes the prescribed examination*, and submits evidence by oath that he:

(a) Is a resident of or shows satisfactory evidence of intent to become a resident of *this state* at the time he is licensed;

(b) Is at least eighteen (18) years of age;

(c) Is of good moral character;

(d) Has received a doctoral degree based on a program of studies, primarily psychological in content, from an accredited college or university having an appropriate graduate program;

(e) *Has* completed at the time of application a minimum of two (2) years of experience in the practice, research, or teaching of psychology. One (1) year of *this* experience shall be post-doctoral.

(3) A license without examination may be issued to a psychologist licensed or certified in another state where the licensing or certification requirements are substantially equivalent to the requirements of this act, or to a psychologist who is a diplomate in good standing of the American board of professional psychology."

Section 318. Section 66-3209, R.C.M. 1947, is amended to read as follows:

"66-3209. **Grounds for refusal or revocation of license — hearing.**

(1) A license applied for, or issued under this act, may be refused or revoked by the board *on* proof that the person to whom the license was issued:

(a) Has been convicted of a felony;

(b) Has been guilty of fraud or deceit in securing the license or a renewal; or

(c) Is using a narcotic or an alcoholic beverage to an extent that *the* use impairs his ability to perform the work of a professional psychologist with safety to the public; or

(d) Has been guilty of unprofessional conduct as defined by the code of ethics published by the American Psychological Association.

(2) *The board may not revoke or refuse to issue or renew a license for any cause, other than failure to pay fees, unless the person is given notice and opportunity for a hearing before the board.*"

Section 319. Section 66-3211, R.C.M. 1947, is amended to read as follows:

"66-3211. **Fees.** (1) The *department* shall collect the following fees, none of which is refundable:

(a) Application fee ..... *twenty-five dollars (\$25)*

(b) Examination fee ..... *fifteen dollars (\$15)*

(c) Certificate fee ..... *ten dollars (\$10)*

(d) Renewal fee ..... *twenty dollars (\$20) to fifty dollars (\$50)*

The board *may* set the annual renewal fee annually within the above limits.

(2) The initial certificate fee shall be prorated as follows:

- (a) If the certificate is issued between January 2 and March 31  
..... *ten dollars (\$10)*
- (b) If the certificate is issued between April 1 and June 30  
..... *seven dollars and fifty cents (\$7.50)*
- (c) If the certificate is issued between July 1 and September 30  
..... *five dollars (\$5)*
- (d) If the certificate is issued between October 1 and January 1  
..... *two dollars and fifty cents (\$2.50)*

(3) Renewal certificates shall be secured annually and dated January 2.

(4) *Fees* received by the *department* shall be deposited in the earmarked revenue fund for the use of the board, *subject to section 82A-1603(6).*"

Section 320. Section 67-2003, R.C.M. 1947, is amended to read as follows:

"67-2003. **Definitions.** Except where the context indicates a different meaning, terms used in this act shall be defined as follows:

(1) A "property corner" is a geographic point on the surface of the earth, and is on, a part of, and controls a property line.

(2) A "property controlling corner" for a property is a public land survey corner, or any property corner, which does not lie on a property line of the property in question, but which controls the location of one or more of the property corners of the property in question.

(3) A "public land survey corner" is any corner actually established and monumented in an original survey or resurvey used as a basis of legal description for issuing a patent for the land to a private person from the United States government.

(4) A "corner," unless otherwise qualified, means a property corner, or a property controlling corner, or a public land survey corner, or any combination of these.

(5) An "accessory to a corner" is any exclusively identifiable physical object whose spatial relationship to the corner is recorded. Accessories may be bearing trees, bearing objects, monuments, reference monuments, line trees, pits, mounds, charcoal-filled bottles, steel or wooden stakes, or other objects.

(6) A "monument" is an accessory that is presumed to occupy the exact position of a corner.

(7) A "reference monument" is a special monument that does not occupy the same geographical position as the corner itself, but whose

spatial relationship to the corner is recorded, and which serves to witness the corner.

(8) A "registered surveyor" is a surveyor who is registered to practice land surveying under *Title 66, chapter 23*, and has a paid up license for that calendar year, or who is authorized under *Title 66, chapter 23*, to practice land surveying.

(9) The "board" is the board of professional engineers and land surveyors, *provided for in section 82A-1602(11).*"

Section 321. Section 67-2101, R.C.M. 1947, is amended to read as follows:

"67-2101. **Definition of terms.** *Unless the context requires otherwise, in this act:*

(1) "*Subdivision*" and "subdivided lands" mean any tract of land which is hereafter divided into five (5) or more parcels, a parcel of which is less than five (5) acres in size, and which is offered for sale or lease outside the state of Montana.

(2) "*Board*" means the board of real estate, *provided for in section 82A-1602.23.*

(3) "*Department*" means the department of professional and occupational licensing, *provided for in Title 82A, chapter 16.*"

Section 322. Section 67-2102, R.C.M. 1947, is amended to read as follows:

"67-2102. **Rules.** The *board* may adopt rules necessary for the enforcement of this act."

Section 323. Section 67-2103, R.C.M. 1947, is amended to read as follows:

"67-2103. **Notice of intention to offer subdivided lands — contents of notice.** (1) Prior to the time when subdivided lands are to be offered for sale or lease outside the state of Montana, the owner, his agent or subdivider shall notify the *board* in writing of his intention to sell or lease such offering.

(2) The notice of intention shall contain the following information:

(a) The name and address of the owner;

(b) The name and address of the subdivider;

(c) The legal description and area of lands, together with a map showing the layout proposed and relation to existing streets or roads;

(d) A true statement of the conditions of the title to the land, particularly including all encumbrances thereon;

(e) A true statement of the terms and conditions on which it is intended to dispose of the land, together with copies of any and all forms of conveyance intended to be used;

(f) A true statement of the provision for legal access, sewage disposal, and public utilities in the proposed subdivision, including water, electricity, gas, and telephone facilities;

(g) Copies of any advertising, information, promotion brochures or similar material depicting the existing property or as it is to exist, which might cause or tend to induce purchase of the property, or an interest therein, when *the* material is or might be circulated outside of this state;

(h) Such other information as the owner, his agent, or subdivider, may desire to present."

Section 324. Section 67-2105, R.C.M. 1947, is amended to read as follows:

"67-2105. **Additional information required by board.** After receiving the notice of intention, the *board* may require additional information concerning the project as *it considers* necessary, for which *it* may prepare a questionnaire for the owner, his agent or subdivider, to answer."

Section 325. Section 67-2106, R.C.M. 1947, is amended to read as follows:

"67-2106. **Fee for filing of questionnaire — disposition of fees.** *When the questionnaire provided for in section 67-2105 is filed, the person filing the questionnaire shall pay to the department a filing fee of one hundred dollars (\$100). Fees and charges provided for by this act shall be paid to the department and by it deposited with the state treasurer. The state treasurer shall place five per cent (5%) of these fees and charges in the general fund and ninety-five per cent (95%) of these fees and charges in the earmarked revenue fund. Fees deposited in the earmarked revenue fund may be used to pay claims for expense incurred in the administration of this act when the claims have been approved as provided by law.*"

Section 326. Section 67-2107, R.C.M. 1947, is amended to read as follows:

"67-2107. **Investigation of subdivisions — powers of board.** The *board* may investigate any subdivision being offered for sale or lease under the provisions of this act. For the purpose of *an* investigation, the *board* may:

(1) Use and rely upon any relevant information or data concerning a subdivision obtained by it from the federal housing administration, the United States veterans administration, or any other agency having comparable duties and functions in relation to subdivisions or property therein.

(2) Require reports prepared by competent authorities as to any hazard to which the subdivision may be subject or any factor which might affect the value or utility of lots or parcels within the subdivision.

(3) Require evidence of compliance with the requirements of appropriate authorities.

(4) Require an inspection of the subdivision to be made."



Section 327. Section 67-2108, R.C.M. 1947, is amended to read as follows:

**"67-2108. Findings not to be used in advertising.** It is unlawful for any person to incorporate in any advertising material or use for any advertising purposes the results or findings of the *board* as provided for in this act."

Section 328. Section 67-2110, R.C.M. 1947, is amended to read as follows:

**"67-2110. Required provisions for protection of purchasers and lessees.** It is unlawful for the owner or subdivider to offer to sell or lease or to sell or lease lots or parcels within a subdivision to persons residing out of the state of Montana unless one of the following conditions is complied with:

(1) All sums paid or advanced by purchasers shall be impounded in an escrow or other depository acceptable to the *board* until: (a) The title or other interest contracted for whether it be title of record, equitable or other interest, is delivered to such purchaser or lessee and until: (b) A proper release is obtained from any such blanket encumbrance, or: (c) Either the owner, subdivider, purchaser or lessee defaults in his undertaking, in which event the moneys shall be paid to the party who is not in default and is entitled thereto.

(2) The title to the subdivision is to be held in trust under an agreement of trust acceptable to the *board* until a proper release from such blanket encumbrance is obtained and title or other interest contracted for is delivered to such purchaser or lessee.

(3) A bond in the amount of twenty-five hundred dollars (\$2,500) to the state of Montana is furnished to the *board* for the benefit and protection of purchasers or lessees of such lots or parcels, in such amount and subject to the terms as may be approved by the *board*, which shall provide for the return of moneys paid or advanced by any purchaser or lessee, for or on account of purchase or lease of any such lot or parcel if the interest contracted for is not delivered or a proper release from such blanket encumbrance is not obtained; however, if the purchaser or lessee, by reason of default, is not entitled to the return of the moneys, or any portion thereof, then the bond shall be exonerated to the extent of the amount of the moneys to which such purchaser or lessee is not entitled."

Section 329. Section 67-2112, R.C.M. 1947, is amended to read as follows:

**"67-2112. Notice of multiple sales or leases to one purchaser or lessee.** When five or more lots or parcels within a subdivision subject to the provisions of this act, are optioned, leased, or sold to another, or when an interest therein is acquired by one owner, lessee or optionee, the *board* shall be notified by the parties to the transaction."

Section 330. Section 67-2113, R.C.M. 1947, is amended to read as follows:

**"67-2113. Inspection of records by board — notice of change of**

**address or change of depository.** Records of the sale or lease of parcels within a subdivision subject to the provisions of this act, shall be subject to inspection by the *board* and the *board* shall be notified of any change of address affecting the location of the owner's, subdivider's or agent's records or of any change in depository for the impounding of purchasers' money in accordance with the provisions herein."

Section 331. Section 67-2114, R.C.M. 1947, is amended to read as follows:

"67-2114. **Orders to desist and refrain — prohibition of sales and leases — hearings.** When in the opinion of the *board* a person has or is violating, or is about to violate, any of the provisions of this act, the *board* may order the person to desist and refrain from doing so, or, if an examination of the project shows that the sale or lease would constitute misrepresentation to, or deceit or fraud of, the purchasers or lessees of lots or parcels in a subdivision, the *board* may issue an order prohibiting the sale or lease, or either, of the property in this state. If, after such an order is made, a request for a hearing by the *board* is filed in writing and a hearing is not held within sixty (60) days thereafter, the order is rescinded."

Section 332. Section 67-2116, R.C.M. 1947, is amended to read as follows:

"67-2116. **Misdemeanors enumerated.** The following acts are misdemeanors:

(1) The willful violation or failure to comply with any of the provisions of this act;

(2) The willful violation, failure, omission or neglect to obey, observe or comply with any order, permit, decision, demand or requirement of the *board*;

(3) The offering for sale or lease as an agent, salesman, or broker for a subdivider, developer, or owner of subdivided lands or a subdivision, wherever situated, which is being offered for sale outside the state of Montana without first complying with the provisions of this act;

(4) The advertising for sale or lease in this state of a parcel in an out-of-state subdivision or in any other manner aiding an owner, subdivider, or developer of an out-of-state subdivision who has not complied with the provisions of this act, to offer within this state subdivided lands."

Section 333. Section 67-2117, R.C.M. 1947, is amended to read as follows:

"67-2117. **Definitions.** When used in this act, unless the context otherwise requires:

(1) "*Disposition*" includes sale, lease, assignment, or any other transaction concerning a subdivision, if undertaken for gain or profit;

(2) "*Offer*" includes every inducement, solicitation, or attempt to encourage a person to acquire an interest in land, if undertaken for gain or profit;

(3) "*Person*" means an individual, corporation, government, or governmental subdivision or agency, business trust, estate, trust, partnership unincorporated association, two (2) or more of any of the foregoing having a joint or common interest, or any other legal or commercial entity;

(4) "*Purchaser*" means a person who acquires or attempts to acquire or succeeds to an interest in land;

(5) "*Subdivider*" means any owner of subdivided land who offers it for disposition or the principal agent of an inactive owner;

(6) "*Subdivision*" and "subdivided lands" mean any land which is divided or is proposed to be divided for the purpose of disposition into five (5) or more lots, parcels, units, or interests and also includes any land whether contiguous or not if five (5) or more lots, parcels, units, or interests are offered as a part of a common promotional plan of advertising and sale.

(7) "*Board*" means the board of real estate, provided for in section 82A-1602.23.

(8) "*Chairman*" means the chairman of the board of real estate.

(9) "*Department*" means the department of professional and occupational licensing, provided for in Title 82A, chapter 16."

Section 334. Section 67-2118, R.C.M. 1947, is amended to read as follows:

"67-2118. **Board.** This act shall be administered by the *board*. The *board* shall charge a fee, not to exceed five hundred dollars (\$500) for each application for registration of subdivided lands received in accordance with this act, which shall be paid into the earmarked revenue fund to the credit of the *board* and is hereby appropriated for the purposes of carrying out the provisions of this act, *subject to section 82A-1603(6)*. All expenditures of the funds by the *board* under the provisions of this act shall be certified and approved by the *board* and paid by the appropriate state officials. Payment shall be made upon warrants appropriately drawn out of the proper funds. The *department* shall provide a system of accounting which shall show the amount of money received therefor, and also an itemized statement of expenses in connection therewith. The *board* may make orders concerning the disbursement of the moneys in the earmarked revenue fund, including the payment of compensation and expenses of board members."

Section 335. Section 67-2121, R.C.M. 1947, is amended to read as follows:

"67-2121. **Application for registration.** (1) The application for registration of subdivided lands shall be filed *with the department* as prescribed by the *board's* rules and shall contain the following documents and information:

(a) An irrevocable appointment of the *department* to receive service of any lawful process in any noncriminal proceeding arising under this act against the applicant or his personal representative;

(b) A legal description of the subdivided lands offered for registration, together with a map showing the division proposed or made, the dimensions of the lots, parcels, units, or interests and the relation of the subdivided lands to existing streets, roads, and other off-site improvements;

(c) The states or jurisdictions in which an application for registration or similar document has been filed and any adverse order, judgment, or decree entered in connection with the subdivided lands by the regulatory authorities in each jurisdiction or by any court;

(d) The applicant's name and address, and the form, date, and jurisdiction of organization; and the address of each of its offices in this state;

(e) The name, address, and principal occupation for the past five (5) years of every director and officer of the applicant or person occupying a similar status or performing similar functions; the extent and nature of his interest in the applicant or the subdivided lands as of a specified date within thirty (30) days of the filing of the application;

(f) A statement, in a form acceptable to the *board*, of the condition of the title to the subdivided lands including encumbrances as of a specified date within thirty (30) days of the date of application by a title opinion of an attorney licensed to practice in this state, not a salaried employee, officer, or director of the applicant or owner, or by other evidence of title acceptable to the *board*;

(g) Copies of the instruments which will be delivered to a purchaser to evidence his interest in the subdivided lands and of the contracts and other agreements which a purchaser will be required to agree to or sign;

(h) Copies of the instruments by which the interest in the subdivided lands was acquired and a statement of any lien or encumbrance upon the title and copies of the instruments creating the lien or encumbrance, if any, with data as to recording;

(i) If there is a lien or encumbrance affecting more than one (1) lot, parcel, unit, or interest a statement of the consequences for a purchaser of failure to discharge the lien or encumbrance and the steps, if any, taken to protect the purchaser in case of this eventuality;

(j) Copies of instruments creating easements, restrictions, or other encumbrances, affecting the subdivided lands;

(k) A statement of the zoning and other governmental regulations affecting the use of the subdivided lands and also of any existing tax and existing or proposed special taxes or assessments which affect the subdivided lands;

(l) A statement of the existing provisions for access, sewage, disposal, water, and other public utilities, in the subdivision; a statement of the improvements to be installed; the schedule for their completion; and a statement as to the provisions for improvement maintenance;

(m) A narrative description of the promotional plan for the disposition of the subdivided lands together with copies of all advertising material which has been prepared for public distribution by any means of communication;

(n) The proposed public offering statement;

(o) Any other information, including any current financial statement, which the *board* by its rules requires for the protection of purchasers.

(2) If the subdivider registers additional subdivided lands to be offered for disposition, he may consolidate the subsequent registration with any earlier registration offering subdivided lands for disposition under the same promotional plan.

(3) The subdivider shall immediately report any material changes in the information contained in an application for registration."

Section 336. Section 67-2122, R.C.M. 1947, is amended to read as follows:

"67-2122. **Public offering statement.** (1) A public offering statement shall disclose fully and accurately the physical characteristics of the subdivided lands offered and shall make known to prospective purchasers all unusual and material circumstances or features affecting the subdivided lands. The proposed public offering statement submitted to the *department* shall be in a form prescribed by the *board's* rules and shall include the following:

(a) *The name and principal address of the subdivider;*

(b) *A general description of the subdivided lands stating the total number of lots, parcels, units, or interests in the offering;*

(c) *The significant terms of any encumbrances, easements, liens, and restrictions, including zoning and other regulations affecting the subdivided lands and each unit or lot, and a statement of all existing taxes and existing or proposed special taxes or assessments which affect the subdivided lands;*

(d) *A statement of the use for which the property is offered;*

(e) *Information concerning improvements, including streets, water supply, levees, drainage control systems, irrigation systems, sewage disposal facilities, and customary utilities, and the estimated cost, date<sup>o</sup> of completion, and responsibility for construction and maintenance of existing and proposed improvements which are referred to in connection with the offering or disposition of any interest in subdivided lands;*

(f) *Additional information required by the board to assure full and fair disclosure to prospective purchasers.*

(2) The public offering statement shall not be used for any promotional purposes before registration of the subdivided lands and afterwards only if it is used in its entirety. No person may advertise or represent that the *board* approves or recommends the subdivided lands or disposition thereof. No portion of the public offering statement may be underscored, italicized, or printed in larger or heavier or different color type than the remainder of the statement unless the *board* requires it.

(3) The *board* may require the subdivider to alter or amend the proposed public offering statement in order to assure full and fair disclosure to prospective purchasers. No change in the substance of the promotional plan or plan of disposition or development of the subdivision may be made

after registration without notifying the *board* and without making appropriate amendment of the public offering statement. A public offering statement is not current unless all amendments are incorporated."

Section 337. Section 67-2123, R.C.M. 1947, is amended to read as follows:

"67-2123. **Inquiry and examination.** *On receipt of an application for registration in proper form by the department, the board shall forthwith initiate an examination to determine that:*

(1) *The subdivider can convey or cause to be conveyed the interest in subdivided lands offered for disposition if the purchaser complies with the terms of the offer, and when appropriate, that release clauses, conveyances in trust, or other safeguards have been provided;*

(2) *There is reasonable assurance that all proposed improvements will be completed as represented;*

(3) *The advertising material and the general promotional plan are not false or misleading and comply with the standards prescribed by the board in its rules and afford full and fair disclosure;*

(4) *The subdivider has not, or if a corporation, its officers, directors, and principals have not, been convicted of a crime involving land dispositions or any aspect of the land sales business in this state, the United States, or any other state or foreign country within the past ten (10) years and has not been subject to any injunction or administrative order entered by any authority within the past ten (10) years restraining a false or misleading promotional plan involving land dispositions;*

(5) *The public offering statement requirements of this act have been satisfied."*

Section 338. Section 67-2124, R.C.M. 1947, is amended to read as follows:

"67-2124. **Notice of filing and registration.** (1) *On receipt of the application for registration in proper form, the department shall issue a notice of filing to the applicant. Within ninety (90) days from the date of the notice of filing, the board shall enter an order registering the subdivided lands or rejecting the registration. If no order of rejection is entered within ninety (90) days from the date of notice of filing, the land shall be considered registered unless the applicant has consented in writing to a delay.*

(2) *If the board affirmatively determines, upon inquiry and examination, that the requirements of section 67-2123 have been met, it shall enter an order registering the subdivided lands and shall designate the form of the public offering statement.*

(3) *If the board determines upon inquiry and examination that any of the requirements of section 67-2123 has not been met, it shall notify the applicant that the application for registration must be corrected in the particulars specified within ten (10) days. If the requirements are not met within the time allowed the board shall enter an order rejecting the*

registration, which shall include the findings of fact upon which the order is based. The order rejecting the registration shall not become effective for twenty (20) days, during which time the applicant may petition for reconsideration and is entitled to a hearing.

(4) No subdivided lands *may* be registered or *considered* registered until the subdivider *has* filed a bond with the *department* running to the state of Montana, executed by a surety company authorized to do business in this state, on a form approved by the *board*, conditioned that the subdivider shall pay, to the extent of ten thousand dollars (\$10,000) for each occurrence, any judgment recovered against him for loss or damage to any person arising out of the sale or disposition in Montana of any subdivided lands situate out-of-state."

Section 339. Section 67-2125, R.C.M. 1947, is amended to read as follows:

"67-2125. **Annual report.** (1) Within thirty (30) days after each annual anniversary of an order registering subdivided lands, the subdivider shall file a report *with the department* in the form prescribed by the rules of the *board*. The report shall reflect any material changes in information contained in the original application for registration.

(2) The *board* may permit the filing of annual reports within thirty (30) days after the anniversary date of the consolidated registration *instead* of the anniversary date of the original registration."

Section 340. Section 67-2126, R.C.M. 1947, is amended to read as follows:

"67-2126. **General powers and duties.** (1) In the administration of this act, the *board* shall have all of the powers and duties as stated in subsections (2), (3) and (4) of section 66-1927. The *board* shall adopt reasonable rules relating to the administration of this act, but not inconsistent therewith, which may be amended or repealed. The rules shall include but need not be limited to:

(a) *Provisions* for advertising standards to assure full and fair disclosure;

(b) *Provisions* for escrow or trust agreements or other means reasonably to assure that all improvements referred to in the application for registration and advertising will be completed and that purchasers will receive the interest in land contracted for;

(c) *Provisions* for operating procedures; and,

(d) *Other* rules necessary and proper to accomplish the purpose of this act.

(2) The *board* by rule or order, after reasonable notice and hearing, may require the filing of advertising material relating to subdivided lands prior to its distribution.

(3) If it appears that a person has engaged or is about to engage in an act or practice constituting a violation of a provision of this act or a rule or order hereunder, the *board*, with or without prior administrative

proceedings, may bring an action in any district court of this state to enjoin the acts or practices and to enforce compliance with this act or any rule or order hereunder. Upon proper showing, injunctive relief or temporary restraining orders shall be granted, and a receiver or conservator may be appointed. The *board* is not required to post a bond in any court proceedings.

(4) The *board* may intervene in a suit involving subdivided lands. In any suit by or against a subdivider involving subdivided lands, the subdivider promptly shall furnish the *department* notice of the suit and copies of all pleadings.

(5) The *board* may:

(a) *Accept* registrations filed in other states or with the federal government;

(b) *Contract* with similar agencies in this state or other jurisdictions to perform investigative functions;

(c) *Accept* grants-in-aid from any source.

(6) The *board* shall *cooperate* with similar agencies in other jurisdictions to establish uniform filing procedures and forms, uniform public offering statements, advertising standards, rules and common administrative practices.

(7) The *board* may exempt a subdivision of twenty-five (25) or fewer lots, parcels, units, or interests from the provisions of this act if it determines that the plan of promotion and disposition is primarily directed to persons in the local community in which the subdivision is situated."

Section 341. Section 67-2127, R.C.M. 1947, is amended to read as follows:

"67-2127. **Investigations and proceedings.** (1) The *board* may:

(a) *Make* necessary public or private investigations within or outside of this state to determine whether any person has violated or is about to violate this act or any rule or order hereunder or to aid in the enforcement of this act or in the prescribing of rules and forms hereunder;

(b) *Require* or permit any person to file a statement in writing, under oath or otherwise as the *board* determines, as to all the facts and circumstances concerning the matter to be investigated.

(2) For the purpose of any investigation or proceeding under this act, the *board* or any officer designated by rule may administer oaths or affirmations, and upon its own motion or upon request of any party may subpoena witnesses, compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of material evidence.

(3) Upon failure to obey a subpoena or to answer questions propounded



by the investigating officer and upon reasonable notice to all persons affected thereby, the *board* may apply to any district court of this state for an order compelling compliance.

(4) Any person directly affected by any ruling, determination, or decision of the *board* or any officer thereof, may appeal to the *board* for hearing and review by serving written notice of appeal upon the chairman within fifteen (15) days after such rule, determination or decision is mailed to, or served upon, the person. Notice of appeal shall state specifically the matters that the appellant desires reviewed, but shall not act as a stay unless otherwise provided by this act. Upon receipt of notice of appeal, the chairman shall serve upon the appellant notice of time and place of said hearing not less than fifteen (15) days prior to the date of hearing, to be held in the offices of the *department* in Helena, Montana, or elsewhere as the chairman shall order. *The board is not bound by any laws of evidence of this state.* Four (4) members of the *board* shall constitute a quorum, one of whom must be the chairman. No member of the *board* shall hear any matter in which he has a personal interest, nor shall he represent any person or witness at the hearing. Any party to the proceedings may challenge any *board member* in writing, served upon the chairman of the *board* five (5) days in advance of any scheduled appeal hearing, stating the reasons therefor, and if the *board* shall find merit in the challenge, it shall disqualify the challenged member. If disqualification reduces the *board* membership to less than four (4), the remaining members shall appoint disinterested people to fill the vacancies to provide a four-man hearing *board*. The *board* may postpone or continue a hearing from time to time as it *considers* necessary. The decision of any three (3) *board members* shall constitute the decision of the *board* on any issue presented for its decision. If the appellant or his representative fails to appear at the hearing after due notice, and good cause for continuance is not shown, the *board* shall render its decision upon the evidence presented to it. The *board* shall have continuing jurisdiction over all matters heard by it, to examine additional evidence, or to hear additional testimony, and to revise, modify, alter, amend or reverse all orders, demands, findings and decisions made by it at any time and shall not lose jurisdiction until jurisdiction has been taken by a court of competent jurisdiction in a proceeding filed in such court."

Section 342. Section 67-2128, R.C.M. 1947, is amended to read as follows:

"67-2128. **Cease and desist orders.** (1) If the *board* determines after notice and hearing that a person has:

- (a) *Violated* any provision of this act;
- (b) *Directly* or through an agent or employee knowingly engaged in any false, deceptive, or misleading advertising, promotional, or sales methods to offer or dispose of an interest in subdivided lands;
- (c) *Made* any substantial change in the plan of disposition and development of the subdivided lands subsequent to the order of registration without obtaining prior written approval from the *board*;
- (d) *Disposed* of any subdivided lands which have not been registered with the *board*; or

(e) *Violated* any lawful order or rule of the *board*; it may issue an order requiring the person to cease and desist from the unlawful practice and to take such affirmative action as in the judgment of the *board* will carry out the purposes of this act.

(2) If the *board* makes a finding of fact in writing that the public interest will be irreparably harmed by delay in issuing an order, it may issue a temporary cease and desist order. Prior to issuing the temporary cease and desist order, the *board* whenever possible by telephone or otherwise shall give notice of the proposal to issue a temporary cease and desist order to the person. Every temporary cease and desist order shall include in its terms a provision that upon request a hearing will be held within twenty (20) days to determine whether or not it becomes permanent."

Section 343. Section 67-2129, R.C.M. 1947, is amended to read as follows:

"67-2129. **Revocation.** (1) A registration may be revoked after notice and hearing upon a written finding of fact that the subdivider has:

(a) *Failed* to comply with the terms of a cease and desist order;

(b) *Been* convicted in any court subsequent to the filing of the application for registration of a crime involving fraud, deception, false pretenses, misrepresentation, false advertising, or dishonest dealing in real estate transactions;

(c) *Disposed of*, concealed, or diverted any funds or assets of any person so as to defeat the rights of subdivision purchasers;

(d) *Failed* faithfully to perform any stipulation or agreement made with the *board* as an inducement to grant any registration, to reinstate any registration, or to approve any promotional plan or public offering statement; or

(e) *Made* intentional misrepresentations or concealed material facts in an application for registration. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.

(2) If the *board* finds after notice and hearing that the subdivider has been guilty of a violation for which revocation could be ordered, it may issue a cease and desist order instead."

Section 344. Section 67-2135, R.C.M. 1947, is amended to read as follows:

"67-2135. **Service of process.** (1) In addition to the methods of service of process provided for in the Montana Rules of Civil Procedure, service may be made upon any person for any cause arising under the provisions of this act by delivering a copy of the process to the office of the *department*, but it is not effective unless:

(a) *The* plaintiff (which may be the *board* in a proceeding instituted by it) *immediately* sends a copy of the process and of the pleading by registered mail to the defendant or respondent at his last known address; and

(b) *The plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.*

(2) If any person, including any nonresident of this state, engages in conduct prohibited by this act or any rule or order hereunder, and has not filed a consent to service of process and personal jurisdiction over him cannot otherwise be obtained in this state, that conduct authorizes the *department* to receive service of process in any noncriminal proceeding against him or his successor which grows out of the conduct and which is brought under this act or any rule or order hereunder, with the same force and validity as if served on him personally. Notice shall be given as provided in subsection (1)."

Section 345. Section 82-301, R.C.M. 1947, is amended to read as follows:

"82-301. **Board of athletics — compensation and expense — meetings — chairman — seal — quorum.** The members of the *board of athletics* shall serve without compensation but shall be allowed necessary expenses, to be paid by the state treasurer on warrant properly drawn out of the proceeds of the tax collected *under this act*. [The] *board shall* before April 1 of each year, elect one of *its* number chairman, shall adopt a seal for the *board* and may *adopt* rules for the administration of *its* office. Two (2) of the members of the *board* constitute a quorum to do business; and the concurrence of at least two (2) *members is* necessary to render a choice or decision by the *board*."

Section 346. There is a new section to be numbered 82-301.1, R.C.M. 1947, which reads as follows:

82-301.1. **Definitions.** Unless the context requires otherwise, in this chapter:

(1) "Board" means the board of athletics, provided for in section 82A-1602.4; and

(2) "Department" means the department of professional and occupational licensing, provided for in Title 82A, chapter 16.

Section 347. Section 82-302, R.C.M. 1947, is amended to read as follows:

"82-302. **Department's duties.** The *department* shall keep a record of the *board's* proceedings, preserve the *board's* books, documents and papers and, prepare for service notices and other papers required by the *board*; and *it* may under direction of the *board* issue subpoenas for the attendance of witnesses before the *board* and may, under direction of the *board*, administer oaths in matters pertaining to the administration of the affairs of the *board*."

Section 348. Section 82-303, R.C.M. 1947, is amended to read as follows:

"82-303. **Jurisdiction over boxing, sparring and wrestling matches — licenses — application for license.** The *board has* the sole

direction, management, control, and jurisdiction over boxing, sparring, and wrestling matches and exhibitions conducted, held, or given within *this* state by a club, corporation, or association. *No* boxing, sparring, or wrestling match or exhibition *may* be conducted, held, or given within *this* state except in accordance with this act. The *board* may, in its discretion *and subject to sections 82A-1603 and 82A-1604*, issue and at its pleasure revoke, a license to conduct, hold, or give boxing, sparring, and wrestling matches and exhibitions to a club, corporation, or association, and which, if it *is* an amateur athletic association, may be incorporated or organized *under rules adopted* by the *board*. *This act does not apply* to or *prohibit* amateur boxing or wrestling exhibitions conducted in or by organized amateur clubs, schools, and gymnasiums. A license *is* subject to rules the *board* makes. An application for a license shall be in writing and addressed to the *department* and verified by an officer of the club, corporation, or association on whose behalf the application *is* made. It shall contain facts *which* show the applicant entitled to receive a license, and other facts and recitals the *board* by *rule* requires to be shown."

Section 349. Section 82-305, R.C.M. 1947, is amended to read as follows:

"82-305. **Duration of bouts — glove specifications — physical examination of participants.** A boxing or sparring match or exhibition *may* be not more than twenty (20) rounds in length; and the contestants shall wear during *these* contests, gloves weighing at least six (6) ounces. *No* person may take part in an exhibition or sparring match unless *he* has first passed a rigorous physical examination to determine *his* fitness to engage in *the* exhibition. *The* examination *is* to be conducted by a regular practicing physician designated by the *board*."

Section 350. Section 82-306, R.C.M. 1947, is amended to read as follows:

"82-306. **Forfeiture of license for conducting fake bouts.** A club, corporation, or association which *conducts, holds, gives, or participates in*, a sham or fake boxing or sparring match or exhibition shall forfeit *the* license issued *under* this act, and it *may* not thereafter receive another license *under* this act."

Section 351. Section 82-308, R.C.M. 1947, is amended to read as follows:

"82-308. **Report of ticket sales — tax on gross receipts — disposition of tax moneys received.** A club, corporation, or association which *exercises* the privileges conferred by this act, shall, within twenty-four (24) hours after the determination of a boxing, sparring, or wrestling contest or exhibition, furnish to the *department* a written report, verified by one of its officers, showing the number of tickets sold for *the* boxing, sparring, or wrestling contest or exhibition and the amount of gross proceeds, and such other matters as the *board* prescribes, and shall also within *twenty-four (24) hours* pay to the county treasurer a tax of five percent (5%) of its total gross receipts after deducting the federal admission tax, if any, from the sale of tickets of admission to *the* boxing, sparring, or wrestling match or exhibition. *This* tax shall be transmitted to the state treasurer

by the county treasurer within a period of ten (10) days after its collection. *The tax shall be deposited in the earmarked revenue fund for the use of the board, subject to section 82A-1603(6).*"

Section 352. Section 82-309, R.C.M. 1947, is amended to read as follows:

"82-309. **Bond of applicant for license.** Before a license is granted to a club, corporation, or association to conduct, hold, or give a boxing, sparring, or wrestling match or exhibition, *the* applicant shall execute and file with the state treasurer a bond in the sum of five thousand dollars (\$5,000), payable to *this* state, to be approved in form by the attorney general, and as to sufficiency of the sureties by the *board*. The bond shall be conditioned on the payment of the tax imposed by section 82-308. On the filing and approving of the bond, the *department* shall issue to the applicant a license."

Section 353. Section 82-310, R.C.M. 1947, is amended to read as follows:

"82-310. **Examination of books and records on failure to make report or unsatisfactory report — penalty for failure to pay tax.** When a club, corporation, or association *fails* to make a report of a contest at the time prescribed by this act or *when* the report is unsatisfactory to the *board*, it may examine or *have* examined the books and records of the club, corporation, or association, and subpoena and examine under oath its officers and other persons as witnesses for the purpose of determining the total amount of its gross receipts for a contest and the amount of tax due *under* this act, which tax *it* may, as the result of the examination, fix and determine. In case of default in the payment of tax ascertained to be due, together with the expenses incurred in making the examination, for a period of twenty (20) days after notice to the delinquent club, corporation, or association of the amount at which *it* may be fixed by the *board*, the delinquent shall forfeit its license and is disqualified from receiving a new license or a renewal of license; and it shall in addition forfeit to *this* state the sum of five hundred dollars (\$500), which may be recovered by the attorney general in the name of *this* state in the same manner as other penalties are by law recovered, and when collected shall be used and applied as other moneys received under *this* act."

Section 354. Section 82A-1602, R.C.M. 1947, is amended to read as follows:

"82A-1602. **Department — agencies allocated to.** The agencies provided for in sections 82A-1602.1 through 82A-1602.27, are allocated to the department for administrative purposes only as prescribed in section 82A-108."

Section 355. There is a new section to be numbered 82A-1602.4, R.C.M. 1947, which reads as follows:

82A-1602.4. **Board of athletics — appointment — qualifications — term.** (1) There is a board of athletics.

(2) The board consists of three (3) members appointed by the governor.

(3) Each member shall serve for a term of three (3) years.

Section 356. There is a new section to be numbered 82A-1602.6, R.C.M. 1947, which reads as follows:

**82A-1602.6. Board of podiatry examiners — appointment — qualifications — term.** (1) There is a board of podiatry examiners.

(2) The board consists of five (5) members. One (1) member is a physician selected by the Montana state board of medical examiners at its annual meeting from its membership. One (1) member is the secretary of the Montana state board of medical examiners. Three (3) members are licensed podiatrists appointed by the governor to three (3) year terms selected from a list of six (6) podiatrists submitted by the Montana association of podiatrists. The podiatrist members shall be residents of this state who have engaged in the active practice of podiatry in this state for at least two (2) years and are of high integrity and ability. The governor shall fill a vacancy on the board from the same list of podiatrists.

Section 357. There is a new section to be numbered 82A-1602.18, R.C.M. 1947, which reads as follows:

**82A-1602.18. Board of nursing — appointment — qualifications — term — removal.** (1) There is a board of nursing.

(2) The board consists of eight (8) members appointed by the governor. The members are:

(a) Five (5) registered professional nurses which constitute the board — professional nursing administration. Each member shall: (i) be a graduate of an approved school of nursing; (ii) be a licensed nurse in this state; (iii) have had at least five (5) years' experience in nursing following graduation; and (iv) have been actively engaged in nursing for at least three (3) years immediately before appointment. At least three (3) members shall have had at least three (3) years in administrative, teaching, or supervisory experience in schools of nursing.

(b) Three (3) practical nurses which constitute the board — practical nursing administration. Each member shall: (i) be a graduate of a school of practical nursing; (ii) be a licensed practical nurse in this state; (iii) have had at least three (3) years' experience as a practical nurse; and (iv) have been actively engaged in the practice of practical nursing for at least two (2) years immediately before appointment.

(3) All members shall have been residents of this state for at least one (1) year before appointment, and be citizens of the United States.

(4) All members shall serve for a term of five (5) years, and a member may not be appointed for more than two (2) consecutive terms. The governor may remove a member from the board for neglect of a duty required by law, or for incompetency, or unprofessional or dishonorable conduct.

Section 358. There is a new section to be numbered 82A-1602.19, R.C.M. 1947, which reads as follows:

**82A-1602.19. Board of optometrists — appointment — qualifications — term.** (1) There is a board of optometrists.

(2) The board consists of three (3) members appointed by the governor.

Each member shall be a registered optometrist of this state and actually engaged in the exclusive practice of optometry in this state during his term of office.

(3) Each member shall serve for a term of six (6) years.

Section 359. There is a new section to be numbered 82A-1602.22, R.C.M. 1947, which reads as follows:

**82A-1602.22. Board of plumbers — appointment — qualifications — term.** (1) There is a board of plumbers.

(2) The board consists of seven (7) members appointed by the governor. The members are:

(a) Two (2) master plumbers and two (2) journeyman plumbers who are at least eighteen (18) years old, who have been residents of this state for more than one (1) year, and who have been at least five (5) out of the last eight (8) years immediately preceding their appointment, duly licensed master or journeyman plumbers;

(b) One (1) registered professional engineer, qualified in mechanical engineering;

(c) One (1) representative of the public who is not engaged in the business of installing or selling plumbing equipment;

(d) One (1) appointed representative of the department of health and environmental sciences, who shall be a sanitary engineer and who is secretary of the board.

(3) The appointed members of the board shall serve for a term of four (4) years.

Section 360. There is a new section to be numbered 82A-1602.23, R.C.M. 1947, which reads as follows:

**82A-1602.23. Board of real estate — appointment — qualifications — term.** (1) There is a board of real estate.

(2) The board consists of five (5) members. The members are the director of agriculture, who is the chairman of the board, and four (4) members appointed by the governor. The four (4) appointed members shall:

(a) Be residents of this state. At least two (2) members shall be active and licensed real estate brokers and have been actively engaged in the real estate business as a broker in this state for not less than five (5) continuous years before appointment;

(b) Be appointed so not more than two (2) are from the same congressional district, with no more than one (1) eligible real estate broker from the same congressional district. If a member takes up residence in a district different from the one in which he resided at the time of appointment, he vacates his membership on the board.

(c) Be appointed, in the event of a vacancy, by appointing a resident from the same district as the member whose office has been vacated.

(3) Not more than three (3) members, including the chairman, shall be from the same political party.

(4) The four (4) appointed members shall serve for a term of four (4) years.

Section 361. There is a new section to be numbered 82A-1602.26, R.C.M. 1947, which reads as follows:

**82A-1602.26. Board of water well contractors — appointment — qualifications — term.** (1) There is a board of water well contractors.

(2) The board consists of five (5) voting members. The members are:

(a) One (1) hydrogeologist appointed by the director of the Montana bureau of mines and geology;

(b) One (1) appointed by the director of natural resources and conservation;

(c) One (1) appointed by the director of health and environmental sciences;

(d) Two (2) licensed water well contractors appointed by the governor with the consent of the senate. These members shall have been residents of this state for at least three (3) years before appointment, and shall have had at least five (5) years' experience in the water well drilling business.

(3) The appointed member shall serve for a term of three (3) years.

Section 362. The terms of the members of the board of athletics, board of podiatry examiners, board of nurses, board of optometrists, board of plumbers, board of real estate, and the board of water well contractors existing prior to the effective date of this act are continued as the initial terms on the respective boards created in sections 82A-1602.4, 82A-1602.6, 82A-1602.18, 82A-1602.19, 82A-1602.22, 82A-1602.23 and 82A-1602.26.

Section 363. Sections 66-404, 66-502, 66-514, 66-902, 66-914, 66-925, 66-1010, 66-1014, 66-1035, 66-1040, 66-1044, 66-1049, 66-1224, 66-1230, 66-1233, 66-1245, 66-1306, 66-1309, 66-1509, 66-1814, 66-1822, 66-1939, 66-2107, 66-2109, 66-2112, 66-2205, 66-2206, 66-2325, 66-2328, 66-2330, 66-2342, 66-2410, 66-2413, 66-2421, 66-2423, 66-2425, 66-2504, 66-2517, 66-2601, 66-2611, 66-2614, 66-2705, 66-2716, 66-2801, 66-2813, 66-2816, 66-3002, 66-3013, 66-3023, 66-3114, 66-3210, 67-2130, are repealed.

Approved March 28, 1974

## CHAPTER NO. 351

AN ACT PROVIDING FOR ALTERNATE METHODS OF FINANCING CITY-COUNTY BOARDS OF HEALTH IN FIRST AND SECOND CLASS COUNTIES; AMENDING SECTION 69-4508, R.C.M. 1947; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*



Section 1. Section 69-4508, R.C.M. 1947, is amended to read as follows:

**"69-4508. Financing of local boards of health—appropriations—tax levies.** (1) Local boards are financed by general fund appropriations, *special levy appropriations*, state and federal funds available, and contributions from school boards and other official and nonofficial agencies.

(2) Appropriations are made as follows:

(a) County boards are financed by an appropriation from the general fund of the county after approval of a budget in the way provided for other county offices and departments under chapter 19, Title 16, R. C. M. 1947.

(b) City boards are financed by an appropriation from the general fund of the city after approval of a budget in the way provided for other city offices and departments under chapter 14, Title 11, R. C. M. 1947.

(c) If a city-county board is created:

(i) *The county commissioners and governing body of the city, or cities, may mutually agree upon the division of expenses. The county part of total expenses is financed by an appropriation from the general fund of the county after approval of a budget in the way provided for other county offices and departments under chapter 19, Title 16, R. C. M. 1947. The city, or cities, part of total costs is financed by an appropriation from the general fund of the city, or cities, participating in the city-county board after approval of a budget in the way provided for other city offices and departments under chapter 14, Title 11, R.C.M. 1947. All moneys shall be deposited with the county treasurer who shall disburse them as county funds; or*

*(ii) In first and second class counties, the county commissioners and governing body of the city, or cities, may mutually agree upon the division of the expenses. The county part of total expenses is financed by a special levy of not more than five (5) mills on the taxable valuation of all property outside the incorporated limits of the city, or cities, participating in the city-county board after approval of a budget in the way provided for other county offices and departments under chapter 19, Title 16, R.C.M. 1947. If the five (5) mill levy is not sufficient to fund the county share, county commissioners may supplement it with an appropriation from the county general fund. Each city, or cities, part of total costs is financed by a special levy of not more than five (5) mills on the taxable valuation of all property within the incorporated limits of the city, or cities, participating in the city-county board after approval of a budget in the way provided for other city offices and departments under chapter 14, Title 11, R.C.M. 1947. All moneys shall be deposited with the county treasurer who shall disburse them as county funds. The special levies authorized by this subsection are in addition to all other levies authorized by law.*

(d) District boards are financed by appropriations from the general funds of the counties in the district in proportion to the population in

each county. First and second class cities which elect to be included in the district contribute to the county in which they are located in the way provided for city-county boards under subsection (2) (c) of this section. All funds shall be deposited with the county treasurer of one (1) of the counties as agreed upon by the commissioners of the counties in the district. The county treasurer shall disburse the funds as county funds.

(3) School boards and other official and nonofficial agencies may contribute funds to a local board.

(4) If the general fund of a city or county is not sufficient to meet the approved budget, a levy of not more than one (1) mill may be made on the taxable valuation of all property in the city or county in addition to all other levies authorized by law. *This subsection does not apply when the board has been financed under subsection (2) (c) (ii) of this section.*

Section 2. This act is effective on passage and approval.

Approved March 28, 1974

## CHAPTER NO. 352

AN ACT AUTHORIZING SCHOOL DISTRICTS TO OPERATE MIDDLE SCHOOLS AS AN ALTERNATIVE TO JUNIOR HIGH SCHOOLS, AND AMENDING SECTIONS 75-6601, 75-6902, 75-7502, AND 75-7504, R.C.M. 1947.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 75-6601, R.C.M. 1947, is amended to read as follows:

"75-6601. **Definition of various schools.** As used in this Title, unless the context clearly indicates otherwise, the term "school" means an institution for the teaching of children that is established and maintained under the laws of the state of Montana at public expense.

The trustees of any district shall designate the grade assignments for the schools of the district but for the purposes of this Title each school shall be known as:

(1) an elementary school when it comprises the work of any combination of kindergarten, other preschool programs or the first eight (8) grades, or their equivalents. *A middle school is a school comprising the work of grades four (4) through eight (8) or any combination thereof that has been accredited as a middle school under the provisions of section 75-7502. When an accredited junior high school or an accredited six-year high school is operated by the district, grades seven (7) and eight (8), or their equivalents, shall not be considered as elementary grades.*

(2) a high school when it comprises the work of one (1) or more grades of school work, or their equivalents, intermediate between the elementary

schools and the institutions of higher education of the state of Montana. Types of high schools shall be designated as follows:

(a) a junior high school is a school comprising the work of grades seven (7) through nine (9), or their equivalents, that has been accredited as a junior high school under the provisions of section 75-7502;

(b) a senior high school is a school which comprises the work of grades ten (10) through twelve (12), or their equivalents, and which is operated in conjunction with a junior high school;

(c) a six-year high school is a school comprising the work of grades seven (7) through twelve (12), or their equivalents, that has been accredited as a six-year high school under the provisions of section 75-7502;

(d) a four-year high school is a school comprising the work of grades nine (9) through twelve (12), or their equivalents;

(e) a county high school is a four-year high school operated as an agency of county government and established under the provisions of the acts of March 3, 1899, March 14, 1901 and any subsequent amendments thereto;

(f) a post-secondary vocational-technical center established under the provisions of section 75-7707.

(3) *unless otherwise required by law, the trustees of an elementary district in which a high school is located and the trustees of the high school district operating such high school may organize the schools of their districts to form a kindergarten through grade twelve (12) school system, provided that the high school and elementary trustees shall not assume responsibility for the administration of grades which are not properly within their jurisdiction.*

Section 2. There is a new section to be numbered 75-6609, R.C.M. 1947, which reads as follows:

**75-6609. Opening of a middle school.** The trustees of any elementary district may open a middle school when such opening has been approved by the superintendent of public instruction. The state superintendent shall investigate an application for the opening of a middle school and shall approve or disapprove the opening before the fourth Monday in June preceding the first year of intended operation. When a middle school opening is approved, the county superintendent shall estimate the ANB after investigating the probable enrollment for the middle school. The ANB so estimated shall be used for budgeting and foundation program purposes during the ensuing school fiscal year.

Section 3. Section 75-6902, R.C.M. 1947, is amended to read as follows:

**"75-6902. Definition and calculation of average number belonging (ANB).** The term "average number belonging" or "ANB" shall mean the average number of regularly enrolled, full-time pupils attending the public schools of a district. Average number belonging shall be computed by determining the total of the aggregate days of attendance by regularly

enrolled, full-time pupils during the current school fiscal year plus the aggregate days of absence by regularly enrolled, full-time pupils during the current school fiscal year, and by dividing such total by one hundred eighty (180). Attendance for a part of a morning session or a part of an afternoon session by a pupil shall be counted as attendance for one-half ( $\frac{1}{2}$ ) day. In calculating the ANB for pupils enrolled in a program established under section 75-7507 prior to January 1, 1974, or pursuant to section 75-7507 (1), attendance at, or absence from, a regular session of the program for at least two hours of either a morning or an afternoon session will be counted as one-half ( $\frac{1}{2}$ ) of a day attended or absent as the case may be. When any pupil has been absent, with or without excuse, for more than ten (10) consecutive school days, including pupil instruction related days, his absence after the tenth (10th) day of absence shall not be included in the aggregate days of absence and his enrollment in the school shall not be considered in the calculation of the average number belonging until he resumes attendance at school.

The average number belonging of the regularly enrolled, full-time pupils for the public schools of a district shall be calculated, individually, for each school except that when:

(1) more than one school of a district, other than a junior high school in an elementary district which has been approved and accredited as a junior high school, is located within the incorporated limits of a city or town, the average number belonging of such schools shall be based on the aggregate of all the regularly enrolled, full-time pupils attending such schools located within the incorporated limits of a city or town;

(2) a junior high school which has been approved and accredited as a junior high school is located within the incorporated limits of a city or town in which a high school is located, all of the regularly enrolled, full-time pupils of the junior high school shall be considered as high school district pupils for the purposes of calculating the average number belonging of the high schools located within the incorporated limits of such city or town;

(3) *a middle school has been approved and accredited, in which case pupils below the seventh grade shall be considered elementary school pupils for ANB purposes, and the seventh and eighth grade pupils shall be considered high school pupils for ANB purposes; or*

(4) a school has not been accredited by the board of *public* education, the regularly enrolled, full-time pupils attending the nonaccredited school shall not be eligible for average number belonging calculation purposes, nor will an average number belonging for the nonaccredited school be used in determining the foundation program for such district."

Section 4. Section 75-7502, R.C.M. 1947, is amended to read as follows:

"75-7502. **Accreditation of schools.** Every school year the conditions under which each elementary school, *middle school*, junior high school, and high school operates shall be reviewed by the superintendent of public instruction to determine each school's compliance with the standards of accreditation. The accreditation status of every school shall then be estab-

lished by the board of *public* education upon the recommendation of the superintendent of public instruction, and notification of such status for the applicable school year shall be given to each district."

Section 5. Section 75-7504, R.C.M. 1947, is amended to read as follows:

**"75-7504. Instruction in middle schools, junior high schools and high schools.** All *middle schools*, junior high schools and high schools shall be taught in the English language. Instruction shall be given in accordance with the requirements of the standards of accreditation adopted by the board of *public* education. Such standards shall require instruction in English, American history, American government, mathematics, science, health and physical education. Instruction may be given in additional subjects when approved by the trustees."

Approved March 28, 1974

## CHAPTER NO. 353

AN ACT AMENDING SECTION 75-7104, R.C.M. 1947, AND AUTHORIZING SCHOOL BOND ISSUES IN EXCESS OF THE LIMITATION ON INDEBTEDNESS WHERE MAJOR INDUSTRIAL FACILITIES ARE UNDER CONSTRUCTION OR ABOUT TO BE CONSTRUCTED.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 75-7104, R.C.M. 1947, is amended to read as follows:

**"75-7104. Limitations on amount of bond issue.** (1) The maximum amount for which each school district shall become indebted by the issuance of bonds, including all indebtedness represented by outstanding bonds of previous issues and registered warrants, is five percent (5%) of the assessed value of the taxable property therein as ascertained by the last completed assessment for state, county, and school taxes previous to the incurring of such indebtedness. All bonds issued in excess of such amount shall be null and void, *except as provided in subsection (2).*

When the total indebtedness of a school district has reached the five percent (5%) limitation prescribed in this section, such school district shall have the power and authority to pay all reasonable and necessary expenses of the school district on a cash basis in accordance with the financial administration provisions of this title.

Whenever bonds are issued for the purpose of refunding bonds, any moneys to the credit of the debt service fund for the payment of the bonds to be refunded shall be applied towards the payment of such bonds and the refunding bond issue shall be decreased accordingly.

(2) *In the case of a school district within which a new major industrial facility which seeks to qualify for taxation as class seven (7) property under*

*section 84-301, R.C.M. 1947, is being constructed or is about to be constructed, the school district may require, as a precondition of the new major industrial facility qualifying as class seven (7) property, that the owners of the proposed industrial facility enter into an agreement with the school district concerning the issuing of bonds in excess of the five percent (5%) limitation prescribed in subsection one (1). Under such an agreement, the school district may, with the approval of the voters, issue bonds which exceed the limitation prescribed in subsection one (1) by a maximum of five percent (5%) of the estimated assessed value of the taxable property of the new major industrial facility when completed. The estimated assessed value of the taxable property of the new major industrial facility shall be computed by the department of revenue when requested to do so by a resolution of the board of trustees of the school district, and copy of the department's statement of estimated assessed value shall be printed on each ballot used to vote on a bond issue proposed under this subsection.*

*Pursuant to the agreement between the new major industrial facility and the school district, and as a precondition to qualifying as class seven (7) property, the new major industrial facility and its owners shall, in addition to such taxes as may be imposed by the school district on property owners generally pay so much of the principal and interests on the bonds provided for under this subsection as shall represent payment on an indebtedness in excess of the limitation prescribed in subsection one (1). After the completion of the new major industrial facility and when the indebtedness of the school district no longer exceeds the limitation prescribed in subsection one (1), the new major industrial facility shall be entitled, after all the current indebtedness of the school district has been paid, to a tax credit over a period of no more than twenty (20) years which credit shall, as a total amount, be equal to the amount by which the facility paid the principal and interest of the school district's bonds in excess of its general liability as a taxpayer within the district.*

*A major industrial facility is a facility, subject to the taxing power of the school district, whose construction or operation will increase the population of the district so as to impose a significant burden upon the resources of the district and to require construction of new school facilities. A significant burden is an increase in ANB of at least twenty percent (20%) in a single year."*

Approved March 28, 1974

## CHAPTER NO. 354

AN ACT PROVIDING THAT ALL SEVENTH AND EIGHTH GRADE PUPILS BE COUNTED AS HIGH SCHOOL PUPILS FOR ANB BUDGETING.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is a new section to be numbered 75-6905.1, R.C.M. 1947, which reads as follows:

75-6905.1. **Seventh and eighth grade ANB.** The ANB calculated for grades seven (7) and eight (8) shall be at the high school ANB rate provided that the school meets the standards for accreditation of a middle school. When such pupils are actually enrolled in an elementary school, the amount of the general fund budget per ANB shall be the same as that of the high school district within which the elementary school is located. To determine the total enrollment of such an elementary school for ANB purposes the seventh and eighth grade pupils shall be included in such total.

Approved March 28, 1974

## CHAPTER NO. 355

AN ACT TO AMEND SECTIONS 53-514, 53-515, 53-516, 53-517, 53-518, 53-519, 59-801, AND 59-802, R.C.M. 1947; TO REQUIRE THE TRANSFER OF TITLE OF CERTAIN STATE-OWNED VEHICLES TO THE NAME OF THE STATE OF MONTANA; TO CONSTITUTE THE DEPARTMENT OF HIGHWAYS, MOTOR POOL DIVISION, AS CUSTODIAN OF CERTAIN MOTOR VEHICLES; TO CONSTITUTE CUSTODY OF CERTAIN MOTOR VEHICLES IN THE USER AGENCIES; TO PROVIDE THAT STATE AGENCIES PAY FOR ALL ACTUAL COSTS OF USING MOTOR VEHICLES; TO REGULATE THE USE OF PRIVATELY OWNED VEHICLES BY STATE EMPLOYEES; AND TO REQUIRE THE DEPARTMENT OF HIGHWAYS TO MAINTAIN MOTOR VEHICLE OPERATING HISTORY RECORDS.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 53-514, R.C.M. 1947, is amended to read as follows:

**"53-514. Department of highways, motor pool division, to be custodian of motor vehicles owned or leased by state.** *The department of highways, motor pool division is hereby constituted the custodian of all motor vehicles operated out of the Helena area used primarily to carry passengers or having a cargo rating of three-quarters (¾) of a ton or less and which do not carry specialized equipment that would render them unfit for interagency use owned or leased by the state of Montana or its boards, commissions or agencies. The legal title to state-owned motor vehicles shall be held in the name of the state of Montana only and all agencies holding title to motor vehicles are hereby required to transfer the same to the state of Montana. In instances where such transfer would affect the federal funding of the agency involved, the agency transferring a vehicle in accordance with this act shall be reimbursed in the amount of the fair value of the vehicle transferred necessary to assure continued participation in federal funding of program."*

Section 2. Section 53-515, R.C.M. 1947, is amended to read as follows:

**"53-515. Rules and regulations — authority and enforcement.** The *department of highways, motor pool division* is hereby delegated the power and authority:

(1) *to formulate and enforce reasonable rules and regulations governing the use and operation of all motor vehicles under control of the department of highways, motor pool division;*

(2) *to assign the use of all state-owned or leased motor vehicles under its control to state officers, departments, bureaus, institutions and commissions, or employees thereof;*

(3) *to charge the individual state agencies using the motor vehicles the actual costs for administration and their maintenance, service, storage and replacement."*

Section 3. Section 53-516, R.C.M. 1947, is amended to read as follows:

**"53-516. Seal on motor vehicles.** Every motor vehicle owned by the state of Montana shall have a seal eight (8) inches in diameter placed upon the vehicle in accordance with the rules and regulations adopted by the *department of highways, motor pool division*."

Section 4. Section 53-517, R.C.M. 1947, is amended to read as follows:

**"53-517. State car for state business only — compensation for driving personal vehicle.** No state officer or employee shall use any state-owned or leased motor vehicle for his own personal and private use, nor shall he be compensated for driving his own motor vehicle except if such motor vehicle is on state business."

Section 5. Section 53-518, R.C.M. 1947, is amended to read as follows:

**"53-518. Adoption of travel regulations — contents — removal from office for violations.** The state *department of highways, motor pool division* shall adopt and formulate travel regulations providing:

(a) Filing an application for travel showing necessity for trips, points to be visited, approximate time of departure and return;

(b) Filing a report upon completion of the trip, showing actual points reached, mileage traveled and car cost record data;

(c) Recording in the car operating history record book all items of expense incurred in the purchase of gas, oil, repairs, labor, storage, or service; and,

(d) That a decal be affixed to the instrument panel of every state-owned vehicle with the following information contained thereon:

Any officer or employee of the state government who uses or authorizes the use of any state-owned motor-propelled passenger carrying vehicle, or of any motor-propelled passenger carrying vehicle leased by the state government, for other than official purposes shall be summarily removed from office by the head of the department of establishment concerned."

Section 6. Section 53-519, R.C.M. 1947, is amended to read as follows:



**"53-519. Requisitions for purchases — operating history records.** All requisitions for *motor vehicle* purchases shall be submitted to the state controller twice yearly, at such times as he may specify and no other requisitions for automobile purchases shall be accepted by him, unless the governor shall deem such purchase to be an emergency necessity.

All *motor vehicle* operating history records for *motor vehicles under control of the department of highways, motor pool division* shall be entered in the *department of highways, motor pool division*, such records to include the purchase price of the vehicle and items of expense incurred in the operation of the vehicle to include gas, oil, repairs, labor, storage and service. A complete summary of the operating cost and history record of all state-owned or *leased* vehicles and trucks shall be prepared for each fiscal year."

Section 7. There is a new section to be numbered 53-519.1, R.C.M. 1947, which reads as follows:

**53-519.1. Transfer of vehicles to other agency.** All motor vehicles in the custody of the department of highways, motor pool division, which are not placed under custody of the department of highways, motor pool division, by section 53-514 shall be equitably transferred to the custody of those agencies that have need of vehicles as demonstrated by use records.

Section 8. There is a new section to be numbered 53-519.2, R.C.M. 1947, which reads as follows:

**53-519.2 Regulations for interagency rental.** The department of highways, motor pool division, shall promulgate regulations for interagency rental of motor vehicles. These regulations shall govern the manner in which vehicles in the custody of one agency and for a time not required for use by that agency can be rented by another agency for its use. These regulations shall also establish the charge for vehicle rental which may include reimbursement of actual costs for administration, maintenance, service, operation, storage and replacement costs of these vehicles.

Section 9. Section 59-801, R.C.M. 1947, is amended to read as follows:

**"59-801. Mileage of all officers.** (1) Members of the legislative assembly, state officers, township officers, jurors, witnesses, county agents, and all other persons, except sheriffs, who may be entitled to mileage, when using their own automobiles or airplanes in the performance of official duties, shall be entitled to collect mileage for the distance actually traveled by automobile, and for the shortest regularly traveled automobile route when travel is by private plane, and no more unless otherwise specifically provided by law; provided, however, that nothing herein contained shall be construed as affecting the validity of section 43-310.

(2) *Where the individual is authorized to operate a privately owned vehicle even though a state owned vehicle is available, a rate of nine cents (9¢) per mile shall be paid.*

(3) *Where a privately owned vehicle is used because a state owned or leased vehicle is not available for use or it is in the best interest of the*

*state that a privately owned vehicle be used, twelve cents (12¢) per mile shall be paid."*

Section 10. Section 59-802, R.C.M. 1947, is amended to read as follows:

**"59-802. Mileage of all officers — liability of approving board for exceeding authorized amount.** Whenever it shall be necessary for any state or county officer or employee to use his own automobile or airplane in the performance of any official duty where traveling expense is allowed by law, such officer or employee, except sheriffs, shall receive twelve cents (12¢) per mile for each mile necessarily traveled by automobile and twelve cents (12¢) per mile by the shortest regularly traveled automobile route when travel is by private plane, and no more unless otherwise specifically provided by law and the members of any lawful approving board shall be liable upon their official bonds, for any claim which they may allow in excess of such amount; provided, however, that nothing herein contained shall be construed as affecting the validity of section 43-310. *It is necessary for an individual to use his own vehicle where it has been determined that a state vehicle is not available for use or that it is in the best interest of the state that a privately owned vehicle be used."*

Section 11. There is a new section to be numbered 53-519.3, R.C.M. 1947, which reads as follows:

**53-519.3. Regulations concerning use of vehicles.** The department of highways shall establish reasonable rules and regulations governing:

- (a) Employee responsibility for misuse and negligent damage of state-owned or leased vehicles;
- (b) Determination of when the use of privately owned vehicles on state business may be justified as in the best interest of the state;
- (c) Procedures for determining when a state vehicle is not available for use.

Approved March 28, 1974

## CHAPTER NO. 356

AN ACT AMENDING SECTION 4-404, R.C.M. 1947, TO PROVIDE FOR A ONE-TIME LIQUOR LICENSE FEE OF TWENTY THOUSAND DOLLARS (\$20,000) FOR THE ISSUANCE OF ORIGINAL LICENSES FOR CITIES WITH A POPULATION OF TEN THOUSAND (10,000) OR MORE, AND AN AREA WITHIN A DISTANCE OF FIVE (5) MILES THEREOF.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 4-404, R.C.M. 1947, is amended to read as follows:

**"4-404. License fee for retail sale of liquor within and without cities and towns of designated populations — census of population.** Each licensee licensed under the provisions of this act shall pay an annual license fee as follows:

(a) Except as hereinafter provided, for each license outside of incorporated cities and incorporated towns, or in incorporated cities and incorporated towns with a population of less than two thousand (2,000), two hundred (\$200.00) dollars per annum;

(b) Except as hereinafter provided, for each license in incorporated cities with a population of more than two thousand (2,000) and less than five thousand (5,000), three hundred (\$300.00) dollars per annum; or within a distance of five (5) miles thereof, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of such city, three hundred (\$300.00) dollars per annum;

(c) Except as hereinafter provided, for each license in incorporated cities with a population of more than five thousand (5,000) and less than ten thousand (10,000), or within a distance of five (5) miles thereof, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of such city, four hundred fifty (\$450.00) dollars per annum;

(d) For each license in incorporated cities with a population of ten thousand (10,000) or more, or within a distance of five (5) miles thereof, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of such city, six hundred dollars (\$600) per annum;

(e) For each railway system in the state of Montana, three hundred (\$300.00) dollars per annum;

(f) The distance of five (5) miles from the corporate limits of any incorporated cities and incorporated towns shall be measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of such city or town; and where the premises of the applicant to be licensed are situated within five (5) miles of the corporate boundaries of two (2) or more incorporated cities or incorporated towns of different populations the license chargeable by the larger incorporated city or incorporated town shall apply and be paid by the applicant; provided, however, that when the premises of the applicant to be licensed are situated within an incorporated town or incorporated city and any portion of said incorporated town or incorporated city be without said five (5) mile limit then the license fee chargeable by the smaller incorporated town or incorporated city shall apply and be paid by said applicant.

*An applicant for the issuance of an original license to be located in areas described in subsection (d) of this section shall pay a one-time original license fee of twenty thousand dollars (\$20,000) for any such license issued. The said one-time license fee of twenty thousand dollars (\$20,000) shall not apply to any transfer or renewal of a license duly issued prior to July 1, 1974. All licenses, however, shall be subject to the annual renewal fee of six hundred dollars (\$600).*

The license fees herein provided for are exclusive of and in addition to other license fees chargeable in the state of Montana for the sale of liquor, beer and malt beverages.

The census taken under the direction of Congress of the United States in the year nineteen hundred and thirty, and every ten years thereafter, shall be the basis upon which the respective populations of said municipalities shall be determined, unless a direct enumeration of the inhabitants thereof be made by the state or municipal corporation, in which case such later direct enumeration shall constitute such basis, provided, however, that no census hereafter taken shall be such basis until it shall have been published under the authority under which the same shall be taken, and then its effect shall from the date of such publication be prospective only and provided, further, that none of the provisions of this act shall be deemed to operate retroactively."

Approved March 28, 1974

## CHAPTER NO. 357

AN ACT DEFINING AND REVISING THE PROCEDURES FOR ESTABLISHING LIBRARY SYSTEMS; AND AMENDING SECTIONS 44-131, 44-212, 44-213, 44-214, AND 44-215, R.C.M. 1947.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 44-131, R.C.M. 1947, is amended to read as follows:

"44-131. **Powers of state library commission.** The state library commission shall have the power: (1) To give assistance and advice to all tax-supported or public libraries in the state and to all counties, cities, towns or regions in the state which may propose to establish libraries, as to the best means of establishing and improving such libraries;

(2) To maintain and operate the state library and make provision for its housing;

(3) To accept and to expend in accordance with the terms thereof any grant of federal funds which may become available to the state for library purposes;

(4) To make rules and regulations and establish standards for the administration of the state library, and for the control, distribution and lending of books and materials;

(5) To serve as the agency of the state to accept and administer any state, federal or private funds or property appropriated for or granted to it for library service or to foster libraries in the state and to establish regulations under which funds shall be dispersed;

(6) To provide library services for the blind *and physically handicapped*;

(7) To furnish, by contract or otherwise, library assistance and information services to state officials, state departments and residents of those parts of the state inadequately serviced by libraries;

(8) To act as a state board of professional standards and library examiners and develop standards for public libraries and adopt rules and regulations for the certification of librarians;

*(9) To designate areas for the establishment of federations of libraries and to designate the headquarters library for such federations. The librarian of the headquarters library shall serve as the coordinator of the federation and as a non-voting member of the federation advisory board of trustees. It is the policy of the legislature to encourage the most efficient delivery of library services to the people of Montana. To that end the state should be divided into regions within which libraries desiring to participate in the distribution of such state funding to libraries as may be available from time to time shall organize into library federations to pool resources and information and avoid duplication of effort."*

Section 2. Section 44-212, R.C.M. 1947, is amended to read as follows:

**"44-212. Library systems defined—establishment.** *Library systems shall include library federations, or library networks as defined hereafter:*

*(1) Library federations. A library federation is a combination of libraries serving a multi-county, multi-city, or city-county area within a federation area designated by the state library commission. Any other public library or town, city, or county within the federation area may participate in such a federation. Two (2) or more cities, towns, counties, or a city and one or more counties may agree by contract to form such a federation by action of their respective governing bodies or duly created boards of library trustees, provided that one of the parties is or maintains a library which has been designated by the state library commission as a headquarters library for that federation area. The participating entities may retain such autonomy over their respective libraries as may be specified in the contract. The expense of providing library services for the library federation shall be apportioned between or among the towns, cities and counties involved on such basis as shall be agreed upon in the contract. The treasurer of one of the participating units, as shall be provided in the contract shall have the custody of the funds of the federation, and the participating governments concerned shall transfer semi-annually to him all monies collected for the "free library fund" in their respective jurisdiction. A participating entity may withdraw from a federation according to the terms for withdrawal provided in the contract by the action of its governing body or by a majority of its qualified voters voting at a general or special election.*

*(2) Library networks. A library network is an agreement between individual libraries or library systems, which may be inter-city, intra-state, or inter-state, for the exchange of information or to provide specific library services not provided in existing library federations."*

Section 3. Section 44-213, R.C.M. 1947, is amended to read as follows:

**"44-213. Participation of other governmental units.** When a

*library federation* shall have been established, the legislative body of any government unit in the *designated library federation area* may decide, with the concurrence of the board of trustees of its library, if it is *maintaining a library*, to participate in the *library federation*. *Each local entity may determine the amount of services it wishes to supply to fulfill the needs of its unit. After the necessary contract has been executed and beginning with the next fiscal year, the said governmental unit shall participate in the library federation and its residents shall be entitled to the benefits of the library federation, and property within its boundaries shall be subject to taxation for library federation purposes.*

The state board of *regents* may contract with the government of any city or county, or the governments of both the city and the county, in which a unit of the university of Montana is located for the establishment and operation of joint *library services*. Any such contract which proposes the erection of a building shall be subject to the approval of the legislature. Any joint *library services* established pursuant to this section shall be operated and supported as provided in such contract and under this chapter."

Section 4. Section 44-214, R.C.M. 1947, is amended to read as follows:

"44-214. **Board of trustees—appointment.** In a *library federation* there shall be a board of trustees with advisory powers only, the operation of the *library federation* having been specified by contract. The board of trustees of each participating library shall name one of their members to the *federation advisory board of trustees* and each participating entity without a duly appointed library board shall name a layman to represent that entity on the *library federation board of trustees*."

Section 5. There is a new section to be numbered 44-214.1, R.C.M. 1947, which reads as follows:

44-214.1. **Boards of trustees — powers.** The board of trustees of a library federation shall act as an advisor to the participating libraries and their boards of trustees. Any disagreement among participants in a library federation regarding the apportionment of funds or grants received from the state library commission shall be resolved by the state library commission. Control over the budgets and administrative policies of participating libraries shall remain in their boards of trustees as provided in section 44-222.

Section 6. Section 44-215, R.C.M. 1947, is amended to read as follows:

"44-215. **Appropriations for support of library federations.** After a *library federation* shall have been established or library service contracted for, the legislative body of the governmental unit for which the library was established or the service engaged, shall appropriate money annually for the support of the *library or library services* and so far as possible, the taxes levied and collected for this purpose shall be levied and collected within the territory to be served."

Approved March 28, 1974

## CHAPTER NO. 358

AN ACT TO AUTHORIZE THE DEPARTMENT OF SOCIAL AND

REHABILITATION SERVICES TO PROVIDE SUPPLEMENTARY ASSISTANCE TO RECIPIENTS OF SUPPLEMENTAL SECURITY INCOME UNDER TITLE XVI OF THE SOCIAL SECURITY ACT OF THE UNITED STATES; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is a new section to be numbered 71-210.1, R.C.M. 1947, which reads as follows:

**71-210.1. Authority to provide supplementary payments from state funds.** The department of social and rehabilitation services shall have the authority to provide supplementary payments from state funds to recipients of supplemental security income for the aged, blind or disabled under Title XVI of the social security act of the United States, or any future amendments thereto.

Section 2. There is a new section to be numbered 71-210.2, R.C.M. 1947, which reads as follows:

**71-210.2. Rules and regulations concerning supplementary payments.** The department shall have the authority to establish standards of assistance and apply them uniformly throughout the state and to determine individuals eligible for and the amount of such supplementary payments under federal and state guidelines.

Section 3. This act is effective upon its passage and approval.

Approved March 28, 1974

## CHAPTER NO. 359

AN ACT TO AUTHORIZE AND DIRECT THE MONTANA DEPARTMENT OF REVENUE IN COMPUTING THE RETAIL SELLING PRICE OF LIQUOR TO DESIGNATE AND ESTABLISH A LESSER RETAIL SELLING PRICE ON ALL LIQUOR MANUFACTURED, DISTILLED, RECTIFIED, BOTTLED OR PROCESSED IN MONTANA THAN IS DESIGNATED AND ESTABLISHED FOR LIQUOR IMPORTED FROM WITHOUT THE STATE; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is a new section to be numbered 4-114.1, R.C.M. 1947, which reads as follows:

**4-114.1. Price of liquor made in Montana.** In computing the selling price of all liquor sold and delivered by the Montana department of revenue, the department of revenue is authorized and directed to designate and establish the state markup on all liquor either manufactured,

distilled, rectified, bottled or processed in Montana at ten percent (10%) less than the amount of markup of products of out of state manufacturers, distillers, rectifiers and processors.

Section 2. There is a new section to be numbered 4-114.2, R.C.M. 1947, which reads as follows:

4-114.2. All acts and parts of acts in conflict herewith are hereby repealed.

Section 3. This act is effective on its passage and approval.

Approved March 29, 1974

## CHAPTER NO. 360

AN ACT AMENDING THE COUNTY WEED CONTROL PROGRAM WITH RESPECT TO NOXIOUS WEED DESIGNATIONS AND THE COMPOSITION AND POWERS OF A COUNTY WEED BOARD; AND AMENDING SECTIONS 16-1701, 16-1709.1, 16-1713, AND 16-1719, R.C.M. 1947.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 16-1701, R.C.M. 1947, is amended to read as follows:

"16-1701. **Noxious weeds defined.** The Canadian thistle (*cirsium arvense* (L.) Scop.), wild morning glory or bindweed (*convolvulus arvensis* L.) white top (*lepidium draba* L.), leafy spurge (*euphorbia virgata* waldst. and kit.), Russian knapweed (*centaurea pteris pallas.*), and such other weed or weeds as may be defined and designated as a noxious weed by the board of county commissioners of each county, *subject to the approval of the county extension agent or agricultural experiment station at Montana state university*, is hereby declared to be a noxious weed and a common nuisance. Such noxious weeds are hereinafter referred to as "weeds.""

Section 2. Section 16-1709.1, R.C.M. 1947, is amended to read as follows:

"16-1709.1. **Weed control and weed seed extermination districts — formation.** A weed control and weed seed extermination district shall be formed in every county of this state and shall include all the land within the boundaries of the county."

Section 3. Section 16-1713, R.C.M. 1947, is amended to read as follows:

"16-1713. **Appointment of weed control and weed seed extermination supervisors — term of office — compensation.** The board of county commissioners of each county shall appoint a county weed board



consisting of three (3) or five (5) members. If a five (5) member board, three (3) members shall be rural agricultural landowners within the county, *one (1) from a city or town within the county, and one (1) teacher of biology, or person with comparable expertise.* If a three (3) member board, two (2) members shall be rural agricultural landowners within the county, and one (1) member shall be *a teacher of biology, or person with comparable expertise.* They shall be appointed for a period of one (1), two (2), and three (3) years respectively for a three (3) member board or should a five (5) member board be selected, they shall be appointed for one (1) and two (2) year terms respectively dating from the preceding July, and thereafter an appointment or reappointment shall be made annually by the board of county commissioners. *The county extension agent in each county shall be an ex-officio member of that county's weed board.* Said supervisors shall be public officers, and they shall organize by choosing a chairman and a secretary. The secretary may or may not be a member of the board. *Salary, per diem and mileage of such supervisors shall be set by resolution of the board of county commissioners.* The supervisors may employ suitable and competent persons as assistants and employees as may be necessary and provide for their compensation. It shall be the duties of said supervisors to supervise within their county the control program."

Section 4. Section 16-1719, R.C.M. 1947, is amended to read as follows:

**"16-1719. County supervisors to control weeds and to exterminate weed seed in the district.** *The supervisors shall control noxious weeds on all lands within the confines of the district. They shall take particular precautions to control the noxious weeds while preserving beneficial vegetation and wildlife habitat. Where at all possible methods for such control shall include mowing, chemical and biological methods.* The total cost of such control shall be paid from the "noxious weed fund." Provided that the cost of controlling such weeds growing along the right of way of a state or federal highway shall upon the presentation by the supervisors of a verified account of the expenses incurred, be paid from the state highway fund. *Costs attributed to other lands within the district shall be assessed to and collected from the appropriate holder or owner of interest as set forth in section 16-1706."*

Approved March 28, 1974

## CHAPTER NO. 361

AN ACT AMENDING SECTIONS 31-201, 31-209, 31-210, 31-213, AND 31-223, R.C.M. 1947, TO MODIFY THE MONTANA HIGHWAY PATROLMEN'S RETIREMENT SYSTEM; AND REPEALING SECTION 31-212, R.C.M. 1947.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 31-201, R.C.M. 1947, is amended to read as follows:

"31-201. **Definitions.** The following words and phrases as used in this act, unless a different meaning is plainly implied by the context, shall have the following meanings:

"Accumulated deductions," the total of the amounts deducted from the salary of a contributor and paid into the fund, and standing to his credit in the fund, together with the regular interest thereon.

"Beneficiary," shall be such person or persons having an insurable interest in his life as he shall nominate by written designation, duly acknowledged and filed with the board.

"Retired patrolman," any person in receipt of a retirement allowance under this act.

"Board," the Montana highway patrolmen's retirement board.

"Compulsory retirement age," sixty years of age.

"Contributor," any person who has accumulated deductions in the fund, standing to his credit.

"Final salary," the average annual compensation received by a contributor before any deductions have been made, and exclusive of maintenance, allowances and expenses, for any three (3) years of continuous service upon which contributions have been made, or, in the event a member has not served three (3) years, the total retirement compensation earned, divided by the number of years served.

"Actuarial equivalent," the accumulated contributions and the present value of the member's state service based on length of service and member's attained age used to provide a life or temporary life income to the legally designated person, based on such person's attained age and sex at the time the option becomes available.

"Account," the Montana highway patrolmen's retirement account in the agency fund.

"Involuntary retirement," a retirement not for cause and before retirement age.

"Member's annuity," payments for life derived from contributions made by the contributor.

"Optional retirement age," the age at which a contributor may retire after twenty (20) years' service or more.

"Retirement age," the age at which a member retires after twenty-five (25) years of creditable service with the Montana highway patrol.

"Retirement allowance," the state annuity plus the member's annuity.

"State annuity," payments for life derived from contributions made by the state of Montana."

Section 2. Section 31-209, R.C.M. 1947, is amended to read as follows:

"31-209. **Payments by contributors.** Every member shall be required to contribute into the account a sum equal to *six and one-half percent*

(6 ½%) of his monthly salary, which sum shall be deducted from his salary and deposited to his credit in the account."

Section 3. Section 31-210, R.C.M. 1947, is amended to read as follows:

"31-210. **Contributions by the state of Montana.** The state of Montana shall annually contribute to the account *an amount equal to fifteen percent (15%) of the salaries, paid to the highway patrolmen who are covered by this account. This contribution shall be for the fiscal year beginning July 1, 1974, only, and a new rate shall be established by the 44th legislative assembly.*"

Section 4. Section 31-213, R.C.M. 1947, is amended to read as follows:

"31-213. **Retirement allowance.** Upon retirement from service a member shall receive a service retirement allowance which shall consist of the state annuity plus the member's annuity. *The service retirement allowance shall be computed as follows: twenty (20) through twenty-five (25) years, two percent (2%) of his final salary for each year of service; twenty-six (26) years and over, two percent (2%) of his final salary for each year of service through the twenty-fifth plus one percent (1%) of his final salary for each year of service past twenty-five (25).*"

Section 5. Section 31-223, R.C.M. 1947, is amended to read as follows:

"31-223. **Service in the armed forces of the United States.** (1) Any member of the Montana highway patrol now in or hereafter inducted into the armed forces of the United States, shall have the option: (a) to continue his payments into the fund; or (b) allow the board to make his payments for him during such military service, in which event he shall repay the fund the full amount of such payments upon his return to the Montana highway patrol, and such repayments must be made within two (2) years after his return to the patrol provided that a member's service in the armed forces of the United States shall be credited to and made a part of the member's service allowance.

(2) *A member with fifteen (15) years or more of service with the Montana highway patrol may at any time prior to his retirement make a written election with the board to qualify all or any portion of his active service in the armed forces of the United States for the purpose of calculating retirement benefits up to a maximum of five (5) years if he is not otherwise eligible to receive credit for this same service pursuant to subsection (1). To qualify this service he must contribute to the account the amount determined by the board to be due based on his compensation and normal contribution rate as of his sixteenth year and as many succeeding years as are required to qualify this service with interest from the date he becomes eligible for this benefit to the date he contributes. He may not qualify more of this service than he has service with the Montana highway patrol in excess of fifteen (15) years.*"

Section 6. There is a new section to be numbered 32-231, R.C.M. 1947, which reads as follows:

32-231. **Cost of living.** (1) "Index" for the purposes of this section means, for any calendar year, that year's annual average consumer price index for urban wage earners and clerical workers, all items

(1957-1959=100) compiled by the bureau of labor statistics, United States department of labor or successor agency.

(2) Effective July 1, 1974, every disability and survivorship retirement allowance then payable to a retired member or his beneficiary shall be increased by a percentage equal to one-half ( $\frac{1}{2}$ ) of the percentage increase in the index for 1973 from the index for the calendar year preceding the effective date of the retirement of the member or the date preceding the date of the deceased member whichever is more.

(3) Effective July 1, 1974, every service retirement allowance granted after twenty (20) years of service to the patrol and payable on July 1, 1974, shall be increased by a percentage equal to one-half ( $\frac{1}{2}$ ) of the percentage increase in the index for 1973 from the index for the calendar year preceding the effective date of retirement of the member.

(4) For the purposes of this section the minimum increase granted in subsections (2) and (3) above shall be the amount when added to the allowance payable on July 1, 1974, that shall total two hundred dollars (\$200) per month.

Section 7. Section 31-212, R.C.M. 1947, is repealed.

Approved March 28, 1974

## CHAPTER NO. 362

AN ACT RELATING TO "HABITUAL TRAFFIC OFFENDERS" PROVIDING FOR A SYSTEM OF CONVICTION POINTS LEADING TO REVOCATION OF DRIVING PRIVILEGES; PROVIDING FOR HEARINGS, PENALTIES AND APPEAL PROCEDURES; AND PROVIDING AN EFFECTIVE DATE OF JANUARY 1, 1975.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is a new section to be numbered 31-175, R.C.M. 1947, which reads as follows:

31-175. **Purpose.** This act is predicated upon the belief and philosophy that innocent drivers and other innocent passengers and pedestrians have a constitutional right to live, free from fear of death or injury from habitual traffic offenders. Further, it is the purpose of this act to reduce the number of motor vehicle accidents in this state, to provide greater safety to the motoring public and others, by denying to the habitual traffic offenders the privilege of operating a motor vehicle upon the public streets and highways of this state.

Section 2. There is a new section to be numbered 31-176, R.C.M. 1947, which reads as follows:

31-176. **Legislative intent.** It is the legislative intent of this act:

(1) to establish criteria and procedures by which persons, who have demonstrated their apparent indifference for the safety and welfare of others and their disrespect for the laws of this state and its political subdivisions and their disregard for the orders of its courts and administrative agencies, may be adjudged habitual traffic offenders; and

(2) to impose increased deprivation of the privilege to operate a motor vehicle upon these persons.

Section 3. There is a new section to be numbered 31-177, R.C.M. 1947, which reads as follows:

31-177. **Definitions.** As used in this act:

(1) "Habitual traffic offender" means any person, who, within a five (5) year period, from and after passage of this act, accumulates thirty (30) or more conviction points according to the schedule specified in this subsection.

(a) first or second degree murder resulting from the operation of a motor vehicle, fifteen (15) points;

(b) voluntary or involuntary manslaughter resulting from operation of a motor vehicle, twelve (12) points;

(c) any offenses punishable as a felony under the motor vehicle laws of Montana, or any felony in the commission of which a motor vehicle is used, twelve (12) points;

(d) driving while under the influence of intoxicating liquor or narcotics or drugs of any kind, ten (10) points;

(e) operating a motor vehicle while his license to do so has been suspended or revoked, ten (10) points;

(f) failure of the driver of a motor vehicle involved in an accident resulting in death or injury to any person to stop at the scene of the accident and give the required information and assistance, eight (8) points;

(g) willful failure of the driver involved in an accident resulting in property damage of two hundred fifty dollars (\$250) to stop at the scene of the accident and give the required information or to otherwise fail to report an accident in violation of the law, four (4) points;

(h) reckless driving, five (5) points;

(i) illegal drag racing or engaging in a speed contest in violation of the law, six (6) points;

(j) operating a motor vehicle without a license to do so, six (6) points, except as hereafter provided: operating a motor vehicle while license has expired within a period of one hundred and eighty (180) days;

(k) speeding, three (3) points;

(l) all other moving violations including operation of a motor vehicle without a license to do so where said license has expired in the previous one hundred and eighty (180) days, two (2) points;

(m) there shall be no multiple application of cumulative points when two (2) or more charges are filed involving a single occurrence. If there are two (2) or more convictions involving a single occurrence, only the number of points for the specific conviction carrying the highest points shall be chargeable against that defendant.

(2) "Conviction" means a finding of guilt by duly constituted judicial authority, or a plea of guilty, or a forfeiture of bail, bond, or other security deposited to secure appearance by a person charged with having committed any offense relating to the use or operation of a motor vehicle which is prohibited by law, ordinance, or administrative order.

(3) "Administrator" means the Montana highway patrol chief.

(4) "Bureau" means the Montana highway patrol bureau.

(5) "License" means any and all types of licenses or permits to operate a motor vehicle.

Section 4. There is a new section to be numbered 31-178, R.C.M. 1947, which reads as follows:

**31-178. Administrator's duties.** Whenever it appears from the records maintained in the bureau that a person's driving record brings him within the definition of an habitual traffic offender, as defined in section 3 (1) [31-177(1)], the administrator shall forthwith certify two (2) copies of that person's driving record and two (2) copies of all relevant abstracts of conviction. One (1) copy of the record and abstracts shall be certified to the attorney general of the state of Montana, and one (1) copy of the record and abstracts shall be certified to the county attorney for the county wherein the person is found. If the person is not licensed by Montana to drive a motor vehicle, but is licensed in another state, the administrator may certify the copy of the records and abstracts to the attorney general and, also, to the county attorney for the county in which the person is found or, in the alternative, to the county attorney for the county of Lewis and Clark, state of Montana.

Section 5. There is a new section to be numbered 31-179, R.C.M. 1947, which reads as follows:

**31-179. County attorney to file verified complaint.** Immediately upon receiving the certified documents from the administrator, the county attorney shall, in the name of the state on the relation of the administrator, file a verified complaint with the district court for a civil proceeding against the person named in the certified document and such documents shall be a part of the verified complaint.

Section 6. There is a new section to be numbered 31-180, R.C.M. 1947, which reads as follows:

**31-180. Notification of attorney general — his duties.** Immediately upon the filing of the verified complaint under section 5 [31-179], the county attorney shall notify the attorney general that the verified complaint has been filed. If the county attorney fails to file the verified complaint within a reasonable time, the attorney general may order the county attorney to file the verified complaint, or, in the alternative, the

attorney general may file the verified complaint under section 5 [31-179] in the proper county as above set forth.

Section 7. There is a new section to be numbered 31-181, R.C.M. 1947, which reads as follows:

**31-181. Abstracts admissible as evidence.** Official abstracts of the records of convictions and bond forfeitures in the custody of the administrator, certified in writing by the administrator to be a correct account of the said convictions and bond forfeitures, may be admitted in evidence in any judicial proceeding under this act upon establishing the proper foundation.

Section 8. There is a new section to be numbered 31-182, R.C.M. 1947, which reads as follows:

**31-182. Court to issue show cause order.** The court in which the verified complaint is filed shall advance the proceeding upon the docket and shall enter an order, which incorporates the verified complaint, to show cause why the person named therein should not be adjudged an habitual traffic offender.

Section 9. There is a new section to be numbered 31-183, R.C.M. 1947, which reads as follows:

**31-183. Service of process.** Service of process shall be made in the same manner as is allowed in any other civil action in this state.

Section 10. There is a new section to be numbered 31-184, R.C.M. 1947, which reads as follows:

**31-184. Court hearing.** At the time and place designated in the order, the court shall hold a hearing upon the show cause order. If the court finds that the defendant is not the person named in the verified complaint, or that he is not an habitual traffic offender as defined in section 3 (1) [31-177(1)], the proceedings shall be dismissed. If the court finds that the defendant is the same person named in the verified complaint and that the defendant is an habitual traffic offender as defined in section 3 (1) [31-177(1)], the court shall so find and adjudge the defendant an habitual traffic offender, and by appropriate order direct the person so adjudged to surrender to the court his license to operate a motor vehicle on the streets and highways of this state. Upon a finding adverse to the defendant, the clerk of the court wherein the hearing is held, shall file with the bureau a copy of the court's order together with the defendant's license. If the proceeding is dismissed, the clerk of the court wherein the hearing is held, shall file with the bureau a copy of the court's order dismissing the proceeding, which order shall state the ground, or grounds, upon which the dismissal was based, and shall specify the court findings on the conviction points which have been accrued by the defendant.

Section 11. There is a new section to be numbered 31-185, R.C.M. 1947, which reads as follows:

**31-185. Penalties.** No person who has been adjudged an habitual traffic offender shall be issued a license to operate a motor vehicle in this state until:

(1) a period of three (3) years has elapsed from the date of the final order of the court adjudging the person an habitual traffic offender; and

(2) the person has met all the requirements of all applicable laws and rules and regulations relating to the licensing of motor vehicle operators in this state; and

(3) the person files with the bureau, and maintains for a period of three (3) years, proof of his financial responsibility in the limits required by law.

Section 12. There is a new section to be numbered 31-186, R.C.M. 1947, which reads as follows:

**31-186. Unlawful for habitual traffic offender to operate motor vehicle.** It shall be unlawful for any person who has been adjudged an habitual traffic offender under the provisions of this act to operate any motor vehicle in this state while the order of the court prohibiting such operation remains in effect.

Section 13. There is a new section to be numbered 31-187, R.C.M. 1947, which reads as follows:

**31-187. Habitual traffic offender operating motor vehicle guilty of misdemeanor.** Any person found to be an habitual traffic offender under this act, and who thereafter operates a motor vehicle in this state while the order of the court prohibiting such operation remains in effect, shall be guilty of a misdemeanor, and upon conviction thereof shall be imprisoned for a period of not more than one (1) year or fined not more one thousand dollars (\$1,000), or both. Provided, however, that, in cases wherein the prohibited operation of a motor vehicle by an habitual traffic offender is necessitated in a situation of extreme emergency in order to save life, limb, or property, he shall not be deemed guilty of a violation under this act.

Section 14. There is a new section to be numbered 31-188, R.C.M. 1947, which reads as follows:

**31-188. When defendant certified for trial.** For the purpose of enforcing the provisions of this act, in any case in which the defendant is charged with, and found guilty of, operating a motor vehicle while his license to do so is suspended or revoked, or is charged with, and found guilty of, driving without a license, the court, after hearing such charge, shall ascertain whether the defendant has been adjudged an habitual traffic offender and by reason of that judgment is prohibited from operating a motor vehicle in this state. If the court determines that the defendant has been so adjudged and that that judgment remains in effect, the court shall certify the case to the district court of its jurisdiction for trial.

Section 15. There is a new section to be numbered 31-189, R.C.M. 1947, which reads as follows:

**31-189. Contruction.** Nothing contained in this act shall be construed as to repeal, modify, or amend any other laws or parts of laws, or any existing ordinance of any political subdivision relating to the operation or licensing of motor vehicles, the licensing of persons to operate motor



vehicles or providing penalties for the violation thereof; nor shall anything in this act be construed so as to preclude the exercise of regulatory powers of any division, agency, department or political subdivision of this state or of the federal government having the statutory power to regulate the operation and licensing of motor vehicles and the licensing of motor vehicle operators.

Section 16. There is a new section to be numbered 31-190, R.C.M. 1947, which reads as follows:

31-190. **Severability.** If any provision of this act is declared unconstitutional or the applicability thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application and to this end the provisions of this act are declared to be severable and the constitutionality of the remainder of this act and the applicability thereof to other persons and circumstances shall not be affected thereby.

Section 17. This act is effective on January 1, 1975.

Approved March 29, 1974

## CHAPTER NO. 363

### AN ACT AMENDING SECTION 84-4910, R.C.M. 1947, TO INCREASE THE ALLOWANCE FOR PERSONAL EXEMPTION FROM INCOME TAXATION.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 84-4910, R.C.M. 1947, is amended to read as follows:

"84-4910. **Exemptions.** (a) Allowance of Personal Exemption. In the case of an individual, the exemptions provided by this section shall be allowed as deductions in computing taxable income.

(b) Taxpayer and Spouse. An exemption of *six hundred fifty dollars (\$650)* shall be allowed for taxable years beginning after December 31, 1973 for the taxpayer; and an additional exemption of *six hundred fifty dollars (\$650)* shall be allowed for taxable years beginning after December 31, 1973 for the spouse of the taxpayer if a separate return is made by the taxpayer, and if the spouse, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer.

(c) Additional Exemption for Taxpayer or Spouse Aged Sixty-five (65) or More. (1) For taxpayer. An additional exemption of *six hundred fifty dollars (\$650)* shall be allowed for taxable years beginning after December 31, 1973 for the taxpayer if he has attained the age of sixty-five (65) before the close of his taxable year.

(2) For spouse. An additional exemption of *six hundred fifty dollars (\$650)* shall be allowed for taxable years beginning after December 31, 1973 for the spouse of the taxpayer if a separate return is made by the taxpayer, and if the spouse has attained the age of sixty-five (65) before the close of such taxable year and, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer.

(d) Additional Exemption for Blindness of Taxpayer or Spouse. (1) For taxpayer. An additional exemption of *six hundred fifty dollars (\$650)* shall be allowed for taxable years beginning after December 31, 1973 for the taxpayer if he is blind at the close of his taxable year.

(2) For spouse. An additional exemption of *six hundred fifty dollars (\$650)* shall be allowed for taxable years beginning after December 31, 1973 for the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse is blind and, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer. For the purposes of this paragraph, the determination of whether the spouse is blind shall be made as of the close of the taxable year of the taxpayer; except that if the spouse dies during such taxable year such determination shall be made as of the time of such death.

(3) Blindness defined. For purposes of this subsection, an individual is blind only if his central visual acuity does not exceed 20/200 in the better eye with correcting lenses, or if his visual acuity is greater than 20/200 but is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(e) Additional Exemption for Dependents. (1) In general. An exemption of *six hundred fifty dollars (\$650)* shall be allowed for taxable years beginning after December 31, 1973 for each dependent:

(A) Whose gross income for the calendar year in which the taxable year of the taxpayer begins is less than *six hundred fifty dollars (\$650)* shall be allowed for taxable years beginning after December 31, 1973, or

(B) Who is a child of the taxpayer and who (i) has not attained the age of nineteen (19) years at the close of the calendar year in which the taxable year of the taxpayer begins, or (ii) is a student.

(2) Exemption denied in case of certain married dependents. No exemption shall be allowed under this subsection for any dependent who has made a joint return with his spouse for the taxable year beginning in the calendar year in which the taxable year of the taxpayer begins.

(3) Child defined. For purposes of paragraph (1) (B), the term "child" means an individual who is a son, stepson, daughter, or stepdaughter of the taxpayer.

(4) Student and educational institution defined. For purposes of paragraph (1) (B) (ii), the term "student" means an individual who during each of five (5) calendar months during the calendar year in which the taxable year of the taxpayer begins.

(A) Is a full-time student at an educational institution; or

(B) Is pursuing a full time course of institutional on-farm training under the supervision of an accredited agent of an educational institution or of a state or political subdivision of a state. For purposes of this paragraph, the term "educational institution" means only an educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on.

(f) General Definition. For purposes of this section, the term "dependent" means any of the following individuals over half of whose support, for the calendar year in which the taxable year of the taxpayer begins, was received from the taxpayer:

- (1) A son or daughter of the taxpayer, or a descendant of either,
- (2) A stepson or stepdaughter of the taxpayer,
- (3) A brother, sister, stepbrother, or stepsister of the taxpayer,
- (4) The father or mother of the taxpayer, or an ancestor of either,
- (5) A stepfather or stepmother of the taxpayer,
- (6) A son or daughter of a brother or sister of the taxpayer,
- (7) A brother or sister of the father or mother of the taxpayer,
- (8) A son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the taxpayer,
- (9) An individual who, for the taxable year of the taxpayer, has as his principal place of abode the home of the taxpayer, and is a member of the taxpayer's household, or

(10) An individual who

(A) is a descendant of a brother or sister of the father or mother of the taxpayer,

(B) for the taxable year of the taxpayer received institutional care required by reason of a physical or mental disability, and

(C) before receiving such institutional care, was a member of the same household as the taxpayer.

(g) Rules Relating to General Definition. For purposes of this section:

(1) The terms "brother" and "sister" include a brother or sister by the half blood.

(2) In determining whether any of the relationships specified in subsection (a) or paragraph (1) of this subsection exists, a legally adopted child of an individual shall be treated as a child of such individual by blood.

(h) Determination of Marital Status. For purposes of this part

(1) The determination of whether an individual is married shall be made as of the close of his taxable year; except that if his spouse dies during his taxable year such determination shall be made as of the time of such death; and

(2) An individual legally separated from his spouse under a decree of divorce or of separate maintenance shall not be considered as married.

(i) Proration of exemption deduction in the case of a nonresident taxpayer

(1) The exemption deduction shall be prorated according to the ratio the taxpayer's Montana adjusted gross income bears to his federal adjusted gross income."

Approved March 29, 1974

## CHAPTER NO. 364

AN ACT ESTABLISHING PREREQUISITES AND PROCEDURES FOR MUNICIPALITIES TO ANNEX CONTIGUOUS AREAS AND AUTHORIZING FREEHOLDERS TO PETITION FOR ANNEXATION; REQUIRING MUNICIPALITIES TO PLAN THE EXTENSION OF GOVERNMENTAL SERVICES TO SUCH AREAS; AND PROVIDING FOR JUDICIAL REVIEW OF ANNEXATION PROCEEDINGS.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is a new section to be numbered 11-514, R.C.M. 1947, which reads as follows:

11-514. **Title.** The bill shall be entitled "The Planned Community Development Act of 1973."

Section 2. There is a new section to be numbered 11-515, R.C.M. 1947, which reads as follows:

11-515. **Purpose.** It is declared as a matter of state policy that current annexation laws and planning methods incorporated in the Montana system are in many cases discriminatory and are causing in many of the Montana cities indiscriminate growth patterns and forcing in many cases citizens of municipalities to be annexed without provision for adequate city services extended and provided for them. Likewise, in many cities city government is annexing and adding to cities not to the benefit of those being annexed, but to the benefit of the city, merely to derive a greater tax base. Likewise, in many cities there are those lying on the perimeter of the city not within the corporate boundaries of a city that are deriving many benefits from the city without paying their just and equal share for these services. Therefore, it is the purpose of this act to develop a just and equitable system of adding to and increasing cities boundaries for the state of Montana, which will develop the following firm policies:

(1) Sound urban development is essential to the continued economic development of this state and any annexation prepared must be well planned in advance.

(2) Municipalities are created to provide the governmental services essential for sound urban development and for the protection of health, safety and welfare in areas being intensively used for residential, commercial, industrial, institutional and governmental purposes or in areas undergoing such development and future annexations must consider these principles.

(3) Municipal boundaries should be extended, in accordance with legislative standards applicable throughout the state, to include such areas and to provide the high quality of governmental services needed for the public health, safety and welfare.

(4) Areas annexed to municipalities in accordance with such uniform legislative standards should receive the services provided by the annexing municipality as soon as possible following annexation.

Section 3. There is a new section to be numbered 11-516, R.C.M. 1947, which reads as follows:

11-516. **Definitions.** The following terms where used in this act have the following meanings, except where the context clearly indicates a different meaning:

(1) "Contiguous" means any area which, at the time annexation procedures are initiated, either abuts directly on the municipal boundary or is separated from the municipal boundary by a street or street right-of-way, a creek or river, the right-of-way of a railroad or other public service corporation, lands owned by the city or some other political subdivision, or lands owned by the state.

(2) "Municipality" means any city or town under Montana law.

(3) "Resident freeholder" means a person who maintains his residence on real property in which he holds an estate of life or inheritance or of which he is the purchaser of such an estate under a contract for deed, some memorandum of which has been filed in the office of the county clerk and recorder.

Section 4. There is a new section to be numbered 11-517, R.C.M. 1947, which reads as follows:

11-517. **Initiation of extention of corporate limits.** The governing body of any municipality may extend the corporate limits of such municipality under the procedure set forth in this act upon the initiation of the procedure by the board itself; or, whenever the resident freeholders situated outside the corporate boundaries of any municipality, but contiguous thereto, desire to have real estate annexed to the municipality, they may file with the governing body of the municipality a petition bearing the signatures of fifty-one percent (51%) of the resident freeholders in the territory sought to be annexed, requesting a resolution stating the intent of the municipality to consider annexation. Upon passage of the resolution, the governing body shall follow the procedure in section 7 [11-520] of this act. If the municipal governing body fails to act within sixty (60) days the petitioners may appeal to the district court under the procedure set down in section 9 [11-522] of this act.

Section 5. There is a new section to be numbered 11-518, R.C.M. 1947, which reads as follows:

**11-518. Plans to provide services.** A municipality exercising authority under this act shall make plans for the extension of services to the area proposed to be annexed and shall, prior to the public hearing provided for in section 7 [11-520] of this act, prepare a report setting forth its plans to provide services to such area. This report shall include:

(1) A map or maps of the municipality and adjacent territory to show the following information:

- (a) the present and proposed boundaries of the municipality;
- (b) the present streets, major truck water mains, sewer interceptors and outfalls and other utility lines, and the proposed extension of such streets and utility lines as required in subsection (3) of this section; and
- (c) the general land-use pattern in the areas to be annexed.

(2) A statement showing that the area to be annexed meets the requirements of section 6 [11-519] of this act.

(3) A statement setting forth the plans of the municipality for extending to the area to be annexed each major municipal service performed within the municipality at the time of annexation. Specifically, such plans shall:

(a) provide a long-range plan for extension of services and the acquisition of properties outside the corporate limits. This plan must show anticipated development a minimum of five (5) years into the future showing on a yearly basis how the municipality plans to extend services, develop and add sections to the city;

(b) provide for extending police protection, fire protection, garbage collection, and streets and street maintenance services to the area to be annexed on substantially the same basis and in the same manner as such services are provided within the rest of the municipality prior to annexation;

(c) provide for future extension of streets and of major trunk water mains, sewer outfall lines and other utility services into the area to be annexed, so that when such streets and utility lines become necessary and are constructed, property owners in the area to be annexed will be able to secure such services, according to the policies in effect in such municipality for extending such services to individual lots or subdivisions;

(d) if extension of streets and water, sewer or other utility lines into the area to be annexed is necessary, set forth a proposed timetable for construction of such streets and utility lines; and

(e) a method must be set forth by which the municipality plans to finance extension of services into the area to be annexed. Included within this plan must be a methodology whereby the area to be annexed may vote upon any proposed capital improvements. Should a negative vote be cast by over fifty percent (50%) of those resident freeholders in the section or sections to be annexed in such election, the area shall not be annexed.

If the area is serviced currently by adequate water and sewage services, streets, curb and gutters, and no capital improvements are needed to provide adequate services stipulated by this section, the municipality must provide the area to be annexed with a plan of how they plan to finance other services to be included within the district — mainly police protection, fire protection, garbage collection, street and street maintenance services, as well as continued utility service. In this annexation plan it must be clearly stated that the entire municipality tends to share the tax burden for these services. And if so, the area may be annexed without a bond issue under the provisions of this act.

Section 6. There is a new section to be numbered 11-519, R.C.M. 1947, which reads as follows:

**11-519. Standards to be met before annexation can occur.** (1) A municipal governing body may extend the municipal corporate limits to include any area which meets the general standards of subsection (2) of this section.

(2) The total area to be annexed must meet the following standards:

(a) it must be contiguous to the municipalities boundaries at the time the annexation proceeding is begun;

(b) no part of the area shall be included within the boundary of another incorporated municipality;

(c) it must be included within and the proposed annexation must conform to a comprehensive plan as prescribed in Title 11, chapter 38, R.C.M. 1947; and

(d) no part of the area shall be included within the boundary, as existing at the inception of such attempted annexation, of any fire district organized under any of the provisions of chapter 20, Title 11, R.C.M. 1947, provided that such fire district was originally organized at least ten (10) years prior to the inception of such attempted annexation.

(3) In fixing new municipal boundaries, a municipal governing body shall, wherever practical, use natural topographic features such as ridge lines and streams and creeks as boundaries, and if a street is used as a boundary, include within the municipality land on both sides of the street and such outside boundary may not extend more than two hundred (200) feet beyond the right-of-way of the street.

Section 7. There is a new section to be numbered 11-520, R.C.M. 1947, which reads as follows:

**11-520. Resolution of intention to annex — public hearing notice — action by governing body after hearing.** (1) The governing body of any municipality desiring to annex territory under the provisions of this act shall first pass a resolution stating the intent of the municipality to consider annexation. Such resolution shall describe the boundaries of the area under consideration and fix a date for a public hearing on the question of annexation, the date for such public hearing to be not less than thirty (30) days and not more than sixty (60) days following passage of the resolution.

(2) The notice of public hearing shall:

(a) fix the date, hour and place of the public hearing;

(b) describe clearly the boundaries of the area under consideration;

(c) state that the report required in section 5 [11-518] of this act will be available in the office of the municipal official designated by the governing body at least fourteen (14) days prior to the date of the public hearing.

Such notice will be given by publication in a newspaper having general circulation in the municipality once a week for at least four (4) successive weeks prior to the date of the hearing. The date of the last publication shall not be more than seven (7) days preceding the date of the public hearing. If there be no such newspaper, the municipality shall post the notice in at least five (5) public places within the municipality and at least five (5) public places in the area to be annexed for thirty (30) days prior to the date of public hearing.

(3) At least fourteen (14) days before the date of the public hearing, the governing body shall approve the report provided for in section 5 [11-518] of this act, and shall make it available to the public at the office of the municipal official designated by the governing body. In addition, the municipality may prepare a summary of the full report for public distribution.

(4) At the public hearing, a representative of the municipality as designated by the governing body shall first make an explanation of the report required in section 5 [11-518] of this act. Following such explanation, all persons resident or owning property in the territory described in the notice of public hearing and all residents of the municipality shall be given an opportunity to be heard.

(5) The municipal governing body shall take into consideration facts presented at the public hearing and shall have authority to amend the report required by section 5 [11-518] of this act and to make changes in the plans for serving the area proposed to be annexed so long as such changes meet the requirements of section 5 [11-518]. At any regular or special meeting held no sooner than seven (7) days following the public hearing and no later than sixty (60) days following such public hearing, the governing body shall have authority to adopt an ordinance extending the corporate limits of the municipality to include all, or such part, of the area described in the notice of public hearing, which meets the requirements of section 6 [11-519] of this act, and which the governing body has concluded should be annexed. The ordinance shall:

(a) contain specific findings showing that the area to be annexed meets the requirements of section 6 [11-519] of this act. The external boundaries of the area to be annexed shall be described by metes and bounds;

(b) contain a statement of the intent of the municipality to provide services to the area being annexed as set forth in the report required by section 5 [11-518] of this act; and

(c) fix the effective date of annexation. The effective date of annexation may be fixed for any date within twelve (12) months from the date of passage of the ordinance.

(6) From and after the effective date of the annexation ordinance, the territory and its citizens and property shall be subject to all debts, laws,



ordinances and regulations in force in such municipality and shall be entitled to the same privileges and benefits as other parts of such municipality. The newly annexed territory shall be subject to municipal taxes levied for the fiscal year following the effective date of annexation. Annexed property which is part of a sanitary district or other special service district which has installed water, sewer or other utilities or improvements, paid for by the residents of said district, shall not be subject to that part of the municipal taxes levied for debt service for the first five (5) years after the effective date of annexation.

(7) If a municipality is considering the annexation of two (2) or more areas which are all adjacent to the municipal boundary but are not adjacent to one another, it may undertake simultaneous proceeding under authority of this act for the annexation of such areas.

(8) For a period of twenty (20) days after the public hearing provided for in section 7 [11-520] of this act the governing body of the municipality shall receive expressions of approval or disapproval in writing, of the proposed annexation from resident freeholders of the territory proposed to be annexed. If a majority of the said resident freeholders, in writing, disapprove the proposed annexation, no further proceedings under this act shall be had, relating to the territory proposed to be annexed or any part thereof, for a period of one (1) year from the date of such disapproval.

Section 8. There is a new section to be numbered 11-521, R.C.M. 1947, which reads as follows:

11-521. **Annexation order.** The clerk or other officer performing the duties of the clerk of the governing body of a municipality shall promptly make and certify under the seal of the municipal corporation a copy of the record so entered upon the minutes, which document shall be filed with the clerk of the county in which the municipality to which the territory or territories are sought to be annexed, is situated. From and after the date of filing the document in the office of the county clerk or the effective date of the ordinance, whichever is later, the annexation of the territory or territories shall be complete and henceforth such annexed territory or territories shall be a part of the municipal corporation, and the city or town to which the annexation is made has the power to pass all necessary ordinances pertaining thereto.

Section 9. There is a new section to be numbered 11-522, R.C.M. 1947, which reads as follows:

11-522. **Right to court review when area annexed.** (1) Within thirty (30) days following the passage of an annexation ordinance under authority of this act, either a majority of the resident freeholders in the territory or the owners of more than seventy-five percent (75%) in assessed valuation of the real estate in the territory who shall believe that he or they will suffer material injury, by reason of the failure of the municipal governing body to comply with the procedure set forth in this act or to meet the requirements set forth in section 6 [11-519] of this act as they apply to his or their property, may file a petition in the district court of the district in which the municipality is located, seeking review of the action of the governing board and serve a copy of the petition on the municipality in the manner of service of civil process.

(2) If two (2) or more petitions for review are submitted to the court, the court may consolidate all such petitions for review at a single hearing.

(3) The review shall be conducted by the court without a jury. The court may hear oral arguments and receive written briefs, and may take evidence intended to show either:

- (a) that the statutory procedure was not followed;
- (b) that the provisions of section 5 [11-518] or section 6 [11-519] were not met; or
- (c) the court may affirm the action of the governing body without change, or it may:

- (i) remand the ordinance to the municipal governing body for further proceedings if procedural irregularities are found to have materially prejudiced the substantive rights of any of the petitioners;

- (ii) remand the ordinance to the municipal governing body for amendment of the boundaries to conform to the provisions of section 6 [11-519]; but the court cannot remand the ordinance to the municipal governing body with directions to add an area to the municipality which was not included in the notice of public hearing and not provided for in plans for service; or

- (iii) remand the report to the municipal governing body for amendment of the plans for providing services to the end that the provisions of section 5 [11-518] of this act are satisfied.

If any municipality fails to take action in accordance with the court's instructions upon remand within three (3) months from receipt of such instructions, the court may in its discretion extend the time for compliance.

(4) Any party to the review proceedings, including the municipality, may appeal to the Montana supreme court from the final judgment of the district court under rules of procedure applicable in other civil cases. The appealing party may apply to the lower court for a stay in its final determination, or a stay of the annexation ordinance, whichever shall be appropriate, pending the outcome of the appeal to the higher court; provided, that the lower court may, with the agreement of the municipality, permit annexation to be effective with respect to any part of the area concerning which no appeal is being made.

If part or all of the area annexed under the terms of an annexation ordinance is the subject of an appeal to the lower or higher court on the effective date of the ordinance, then the ordinance shall be deemed amended to make the effective date with respect to such area the date of the final judgment of the lower or higher court, whichever is appropriate, or the date the municipal governing board completes action to make the ordinance conform to the court's instructions in the event of remand.

(5) All decisions and findings of the governing body of the municipality shall be presumed to be reasonable and lawful, until and unless they are modified or set aside by the governing body or upon review.

(6) No decisions of the governing body shall be subject to collateral attack and may be reviewed or modified only in the manner provided herein.

Section 10. There is a new section to be numbered 11-523, R.C.M. 1947, which reads as follows:

**11-523. Right to court review when area not annexed.** After the resident freeholders have properly petitioned the governing body of the municipality and the body has failed to pass a resolution of intent to annex within sixty (60) days, the petitioners may file a complaint and a duplicate copy of the petition in the district court of the proper jurisdiction stating the reason why the proposed annexation should take place. The municipality shall be designated party defendant in the cause and shall be required to appear and answer as in other cases. The court, without a jury, shall hear and determine the questions presented in the petition. If the evidence establishes that:

(1) essential municipal services and facilities are not available to the inhabitants of such territory;

(2) the municipality is physically and financially able to provide municipal services to the area sought to be annexed; and

(3) at least one-eighth ( $\frac{1}{8}$ ) of the aggregate external boundaries of the territory sought to be annexed is contiguous to the boundaries of the municipality; the court shall order the proposed annexation to take place, notwithstanding the provisions of any other law of this state.

If, however, the evidence does not establish all three (3) of the foregoing factors, the court shall deny the petition to annex and dismiss the proceeding.

Section 11. There is a new section to be numbered 11-524, R.C.M. 1947, which reads as follows:

**11-524. Certain expenditures authorized.** Municipalities initiating annexations under the provisions of this act are authorized to make expenditures for surveys required to describe the property under consideration, or for any other purpose necessary to plan for the study or annexation of unincorporated territory adjacent to the municipality. In addition, following final passage of the annexation ordinance, the annexing municipality shall have authority to proceed with expenditures for construction of streets, utility lines and other capital facilities in the annexed area.

Section 12. There is a new section to be numbered 11-525, R.C.M. 1947, which reads as follows:

**11-525. Severability and construction.** It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Insofar as the provisions of this act are inconsistent with the provisions

of any other law, the provisions of this act shall be controlling. The method of annexation authorized in this act shall be construed as supplemental to and independent from other methods of annexation authorized by state law.

Approved March 29, 1974

## CHAPTER NO. 365

AN ACT TO BE KNOWN AS THE "UNIFORM PROBATE CODE" RELATING TO AFFAIRS OF DECEDENTS, MISSING PERSONS, PROTECTED PERSONS, MINORS, INCAPACITATED PERSONS AND CERTAIN OTHERS; CONSOLIDATING AND REVISING THE LAW RELATING TO WILLS AND INTESTACY AND THE ADMINISTRATION AND DISTRIBUTION OF ESTATES OF DECEDENTS, MISSING PERSONS, PROTECTED PERSONS, MINORS, INCAPACITATED PERSONS AND CERTAIN OTHERS; ORDERING THE POWERS AND PROCEDURES OF THE COURT CONCERNED WITH THE AFFAIRS OF DECEDENTS AND CERTAIN OTHERS; PROVIDING FOR THE TERMINATION OF JOINT TENANCIES AND LIFE ESTATES; REPEALING SECTIONS 22-101 THROUGH 22-117, 91-101, 91-102, 91-107, 91-108, 91-113 THROUGH 91-116, 91-122, 91-125 THROUGH 91-130, 91-135 THROUGH 91-139, 91-141, 91-201, 91-210, 91-214 THROUGH 91-217, 91-227, 91-235, 91-301, 91-303, 91-304, 91-307, 91-308, 91-311 THROUGH 91-314, 91-317, 91-319, 91-321, 91-402 THROUGH 91-405, 91-411 THROUGH 91-418, 91-423 THROUGH 91-430, 91-520 THROUGH 91-522, 91-612A, 91-612B, 91-701, 91-702, 91-801 THROUGH 91-811, 91-901, 91-904, 91-1001 THROUGH 91-1003, 91-1101 THROUGH 91-1105, 91-1107, 91-1301 THROUGH 91-1303, 91-1305 THROUGH 91-1312, 91-1401, 91-1402, 91-1404 THROUGH 91-1406, 91-1501 THROUGH 91-1509, 91-1601 THROUGH 91-1604, 91-1701 THROUGH 91-1723, 91-1801 THROUGH 91-1807, 91-1901 THROUGH 91-1906, 91-2002 THROUGH 91-2004, 91-2101 THROUGH 91-2105, 91-2201 THROUGH 91-2204, 91-2207 THROUGH 91-2213, 91-2401 THROUGH 91-2407, 91-2501 THROUGH 91-2507, 91-2601 THROUGH 91-2612, 91-2701 THROUGH 91-2705, 91-2707 THROUGH 91-2712, 91-2715 THROUGH 91-2720, 91-2723, 91-2724, 91-2801 THROUGH 91-2810, 91-2901, 91-2902, 91-3001 THROUGH 91-3039, 91-3101 THROUGH 91-3109, 91-3201 THROUGH 91-3204, 91-3209 THROUGH 91-3212, 91-3301 THROUGH 91-3313, 91-3405, 91-3407, 91-3601 THROUGH 91-3608, 91-3701 THROUGH 91-3706, 91-3801 THROUGH 91-3803, 91-3901 THROUGH 91-3907, 91-4001 THROUGH 91-4012, 91-4101 THROUGH 91-4106, 91-4311, 91-4314 THROUGH 91-4316, 91-4321, 91-4322, 91-4501 THROUGH 91-4508, 91-4510 THROUGH 91-4518, 91-4522 THROUGH 91-4525, 91-4601 THROUGH 91-4604, 91-4606 THROUGH 91-4608, 91-4610, 91-4611, 91-4701 THROUGH 91-4706, 91-4801 THROUGH 91-4822, 91-4901 THROUGH 91-4904, 91-4906, 91-4907, 91-4909 THROUGH 91-4911, 91-5001 THROUGH 91-5007, 91-5101 THROUGH 91-5111, 91-5202, 91-5203, 91-5210, 91-5301 THROUGH 91-5312, AND

93-1404.4, R.C.M. 1947; AND AMENDING SECTIONS 91-131, 91-218, 91-612, 91-1106, 91-3406, 91-4411, 91-4417, 91-4423, 91-4430, 91-4437, 91-4438, 91-4448, AND 91-4467, R.C.M. 1947; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1.

GENERAL PROVISIONS, DEFINITIONS, AND  
PROBATE JURISDICTION OF COURT  
SHORT TITLE, CONSTRUCTION, GENERAL  
PROVISIONS

Section 91A-1-101. **Short title.** This act shall be known and may be cited as the Uniform Probate Code.

Section 91A-1-102. **Purposes; rules of construction.** (1) This code shall be liberally construed and applied to promote its underlying purposes and policies.

(2) The underlying purposes and policies of this code are:

(a) to simplify and clarify the law concerning the affairs of decedents, missing persons, protected persons, minors and incapacitated persons;

(b) to discover and make effective the intent of a decedent in distribution of his property;

(c) to promote a speedy and efficient system for liquidating the estate of the decedent and making distribution to its successors;

(d) to make uniform the law among the various jurisdictions.

Section 91A-1-103. **Supplementary general principles of law applicable.** Unless displaced by the particular provisions of this code, the principles of law and equity supplement its provisions.

Section 91A-1-104. **Severability.** If any provision of this code or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the code which can be given effect without the invalid provision or application, and to this end the provisions of this code are declared to be severable.

Section 91A-1-105. **Construction against implied repeal.** This code is a general act intended as a unified coverage of its subject matter and no part of it shall be deemed impliedly repealed by subsequent legislation if it can reasonably be avoided.

Section 91A-1-106. **Effect of fraud and evasion.** Whenever fraud has been perpetrated in connection with any proceeding or in any statement filed under this code or if fraud is used to avoid or circumvent the provisions or purposes of this code, any person injured thereby may obtain appropriate relief including restitution against the perpetrator of the fraud or any person benefitting from the fraud, whether innocent or not (other than a bona fide purchaser for value and without notice). Any proceeding must be commenced within two (2) years after the discovery of

the fraud, but no proceeding may be brought against one not a perpetrator of the fraud later than five (5) years after the time of commission of the fraud. This section has no bearing on remedies relating to fraud practiced on a decedent during his lifetime which affects the succession of his estate.

Section 91A-1-107. **Evidence as to death or status.** In proceedings under this code the rules of evidence in courts of general jurisdiction including any relating to simultaneous deaths, are applicable unless specifically displaced by the code. In addition, the following rules relating to determination of death and status are applicable:

(1) a certified or authenticated copy of a death certificate purporting to be issued by an official or agency of the place where the death purportedly occurred is prima facie proof of the fact, place, date and time of death and the identity of the decedent;

(2) a certified or authenticated copy of any record or report of a governmental agency, domestic or foreign, that a person is missing, detained, dead, or alive is prima facie evidence of the status and of the dates, circumstances and places disclosed by the record or report;

(3) a person who is absent for a continuous period of seven (7) years, during which he has not been heard from, and whose absence is not satisfactorily explained after diligent search or inquiry is presumed to be dead. His death is presumed to have occurred at the end of the period unless there is sufficient evidence for determining that death occurred earlier.

Section 91A-1-108. **Acts by holder of general power.** For the purpose of granting consent or approval with regard to the acts or accounts of a personal representative, including relief from liability or penalty for failure to post bond, or to perform other duties the sole holder or all coholders of a presently exercisable general power of appointment, including one in the form of a power of amendment or revocation, are deemed to act for beneficiaries to the extent their interests (as objects, takers in default, or otherwise) are subject to the power.

#### DEFINITIONS

Section 91A-1-201. **General definitions.** Subject to additional definitions contained in the subsequent articles which are applicable to specific articles or parts, and unless the context otherwise requires, in this code:

(1) "Application" means a written request to the clerk for an order of informal probate or appointment under sections 91A-3-301 through 91A-3-309, inclusive.

(2) "Beneficiary," as it relates to trust beneficiaries, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer and as it relates to a charitable trust, includes any person entitled to enforce the trust.

(3) "Child" includes any individual entitled to take as a child under this code by intestate succession from the parent whose relationship is involved.

(4) "Claims," in respect to estates of decedents and protected persons, includes liabilities of the decedent or protected person whether arising in contract, in tort or otherwise, and liabilities of the estate which arise at or after the death of the decedent or after the appointment of a conservator, including funeral expenses and expenses of administration. The term does not include estate or inheritance taxes, demands or disputes regarding title of a decedent or protected person to specific assets alleged to be included in the estate.

(5) "Clerk" or "clerk of court" means the clerk of the district court.

(6) "Court" means the court having jurisdiction in matters relating to the affairs of decedents. This court in this state is known as district court.

(7) "Conservator" means a person who is appointed by a court to manage the estate of a protected person.

(8) "Devise," when used as a noun, means a testamentary disposition of real or personal property and when used as a verb, means to dispose of real or personal property by will.

(9) "Devisee" means any person designated in a will to receive a devise. In the case of a devise to an existing trust or trustee, or to a trustee on trust described by will, the trust or trustee is the devisee and the beneficiaries are not devisees.

(10) "Disability" means cause for a protective order as described by section 91A-5-401.

(11) "Distributee" means any person who has received property of a decedent from his personal representative other than as a creditor or purchaser. A testamentary trustee is a distributee only to the extent of distributed assets or increment thereto remaining in his hands. A beneficiary of a testamentary trust to whom the trustee has distributed property received from a personal representative is a distributee of the personal representative. For purposes of this provision, "testamentary trustee" includes a trustee to whom assets are transferred by will, to the extent of the devised assets.

(12) "Estate" includes the property of the decedent, trust, or other person whose affairs are subject to this code as originally constituted and as it exists from time to time during administration.

(13) "Exempt property" means that property of a decedent's estate which is described in section 91A-2-402.

(14) "Fiduciary" includes personal representative, guardian, conservator and trustee.

(15) "Foreign personal representative" means a personal representative of another jurisdiction.

(16) "Formal proceedings" means those conducted before a judge with notice to interested persons.

(17) "Guardian" means a person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment, but excludes one who is merely a guardian ad litem.

(18) "Heirs" means those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the property of a decedent.

(19) "Incapacitated person" is as defined in section 91A-5-101.

(20) "Informal proceedings" mean those conducted without notice to interested persons by the clerk of court for probate of a will or appointment of a personal representative.

(21) "Interested person" includes heirs, devisees, children, spouses, creditors, beneficiaries and any others having a property right in or claim against a trust estate or the estate of a decedent, ward or protected person which may be affected by the proceeding. It also includes persons having priority for appointment as personal representative, and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding.

(22) "Issue" of a person means all his lineal descendants of all generations, with the relationship of parent and child at each generation being determined by the definitions of child and parent contained in this code.

(23) "Lease" includes an oil, gas, coal or other mineral lease.

(24) "Letters" includes letters testamentary, letters of guardianship, letters of administration, and letters of conservatorship.

(25) "Minor" means a person who is under eighteen (18) years of age.

(26) "Mortgage" means any conveyance, agreement or arrangement in which property is used as security.

(27) "Nonresident decedent" means a decedent who was domiciled in another jurisdiction at the time of his death.

(28) "Organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two (2) or more persons having a joint or common interest, or any other legal entity.

(29) "Parent" includes any person entitled to take, or who would be entitled to take if the child died without a will, as a parent under this code by intestate succession from the child whose relationship is in question.

(30) "Person" means an individual, a corporation, an organization, or other legal entity.

(31) "Personal representative" includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status. "General personal representative" excludes special administrator.

(32) "Petition" means a written request to the court for an order after notice.

(33) "Proceeding" includes action at law and suit in equity.



(34) "Property" includes both real and personal property or any interest therein and means anything that may be the subject of ownership.

(35) "Protected person" is as defined in section 91A-5-101.

(36) "Protective proceeding" is as defined in section 91A-5-101.

(37) "Securities" includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease, collateral trust certificate, transferable share, voting trust certificate or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation, any temporary or interim certificate, receipt or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the foregoing.

(38) "Settlement," in reference to a decedent's estate, includes the full process of administration, distribution and closing.

(39) "Special administrator" means a personal representative as described by sections 91A-3-614 through 91A-3-618.

(40) "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

(41) "Successor personal representative" means a personal representative, other than a special administrator, who is appointed to succeed a previously appointed personal representative.

(42) "Successors" means those persons, other than creditors, who are entitled to property of a decedent under his will or this code.

(43) "Supervised administration" refers to the proceedings described in sections 91A-3-501 through 91A-3-505 inclusive.

(44) "Testacy proceeding" means a proceeding to establish a will or determine intestacy.

(45) "Trust" includes any express trust, private or charitable, with additions thereto, wherever and however created. It also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. "Trust" excludes other constructive trusts, and it excludes resulting trusts, conservatorships, personal representatives, custodial arrangements pursuant to Title 67, chapter 18, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, and any arrangement under which a person is nominee or escrowee for another.

(46) "Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by court.

(47) "Ward" is as defined in section 91A-5-101.

(48) "Will" includes codicil and any testamentary instrument which merely appoints an executor or revokes or revises another will.

## SCOPE, JURISDICTION AND COURTS

Section 91A-1-301. **Territorial application.** Except as otherwise provided in this code, this code applies to (1) the affairs and estates of decedents, missing persons, and persons to be protected in this state,

(2) the property of nonresidents located in this state or property coming into the control of a fiduciary who is subject to the laws of this state, and

(3) incapacitated persons and minors in this state.

Section 91A-1-302. **Subject matter jurisdiction.** (1) To the full extent permitted by the constitution, the court has jurisdiction over all subject matter relating to

(a) estates of decedents, including construction of wills and determination of heirs and successors of decedents, and estates of protected persons; and

(b) protection of minors and incapacitated persons.

(2) The court has full power to make orders, judgments and decrees and take all other action necessary and proper to administer justice in the matters which come before it.

Section 91A-1-303. **Venue; multiple proceedings; transfer.** (1) where venue for a proceeding under this code may lie in more than one county in the state, the court in which the proceeding is first commenced has the exclusive right to proceed.

(2) If proceedings concerning the same estate, protected person, ward, or trust are commenced in more than one (1) court of this state, the court in which the proceeding was first commenced shall continue to hear the matter, and the other courts shall hold the matter in abeyance until the question of venue is decided, and if the ruling court determines that venue is properly in another court, it shall transfer the proceeding to the other court.

(3) If a court finds that as a matter of law or in the interest of justice a proceeding or a file should be located in another court of this state, the court making the finding may transfer the proceeding or file to the other court.

Section 91A-1-304. **Practice in court.** Unless specifically provided to the contrary in this code or unless inconsistent with its provisions, the rules of civil procedure including the rules concerning vacation of orders and appellate review govern formal proceedings under this code.

Section 91A-1-305. **Records and certified copies.** The clerk of court shall keep a record for each decedent, ward, protected person or trust involved in any document which may be filed with the court under this code, including petitions and applications, demands for notices or bonds, and of any orders or responses relating thereto by the clerk or court, and establish and maintain a system for indexing, filing or recording which is sufficient to enable users of the records to obtain adequate information. Upon payment of the fees required by law the clerk must issue certified copies of any probated wills, letters issued to personal representatives, or

any other record or paper filed or recorded. Certificates relating to probated wills must indicate whether the decedent was domiciled in this state and whether the probate was formal or informal. Certificates relating to letters must show the date of appointment.

Section 91A-1-306. **Jury trial.** (1) If duly demanded, a party is entitled to trial by jury in a formal testacy proceeding, a formal proceeding for determination of heirship and any other proceeding as may be provided for by law.

(2) If there is no right to trial by jury under subsection (1) or the right is waived, the court in its discretion may call a jury to decide any issue of fact, in which case the verdict is advisory only.

Section 91A-1-307. **Clerk of court; powers.** The acts and orders which this code specifies as performable by the clerk of court may be performed either by a judge of the court or by the clerk of court.

Section 91A-1-308. **Appeals.** Appellate review, including the right to appellate review, interlocutory appeal, provisions as to time, manner, notice, appeal bond, stays, scope of review, record on appeal, briefs, arguments and power of the appellate court, is governed by the statutes and rules applicable to the appeals to the Supreme Court.

Section 91A-1-309. **Oath or affirmation on filed documents.** Except as otherwise specifically provided in this code or by rule, every document filed with the court under this code including applications, petitions, and demands for notice, shall be deemed to include an oath, affirmation, or statement to the effect that its representations are true as far as the person executing or filing it knows or is informed; deliberate falsification therein shall constitute the offense of false swearing.

#### NOTICE, PARTIES AND REPRESENTATION IN ESTATE LITIGATION AND OTHER MATTERS

Section 91A-1-401. **Notice; method and time of giving.** (1) If notice of a hearing on any petition is required and except for specific notice requirements as otherwise provided, the petitioner shall cause notice of the time and place of hearing of any petition to be given to any interested person or his attorney if he has appeared by attorney or requested that notice be sent to his attorney. Notice shall be given:

(a) by mailing a copy thereof at least fourteen (14) days before the time set for the hearing by certified, registered or ordinary first class mail addressed to the person being notified at the post office address given in his demand for notice, if any, or at his office or place of residence, if known;

(b) by delivering a copy thereof to the person being notified personally at least fourteen (14) days before the time set for the hearing; or

(c) if the address, or identity of any person is not known and cannot be ascertained with reasonable diligence, by publishing at least once a week for three (3) consecutive weeks, a copy thereof in a newspaper having general circulation in the county where the hearing is to be held, the last publication of which is to be at least ten (10) days before the time set for the hearing.

(2) The court for good cause shown may provide for a different method or time of giving notice for any hearing.

(3) Proof of the giving of notice shall be made on or before the hearing and filed in the proceeding.

**Section 91A-1-402. Notice; waiver.** A person, including a guardian ad litem, conservator, or other fiduciary, may waive notice by a writing signed by him or his attorney and filed in the proceeding.

**Section 91A-1-403. Pleadings; when parties bound by others; notice.** In formal proceedings involving trusts or estate of decedents, minors, protected persons, or incapacitated persons, and in judicially supervised settlements, the following apply:

(1) Interests to be affected shall be described in pleadings which give reasonable information to owners by name or class, by reference to the instrument creating the interests, or in other appropriate manner.

(2) Persons are bound by orders binding others in the following cases:

(a) Orders binding the sole holder or all coholders of a power of revocation or a presently exercisable general power of appointment, including one in the form of a power of amendment, bind other persons to the extent their interests (as objects, takers in default, or otherwise) are subject to the power.

(b) To the extent there is no conflict of interest between them or among persons represented, orders binding a conservator bind the person whose estate he controls; orders binding a guardian bind the ward if no conservator of his estate has been appointed; orders binding a trustee bind beneficiaries of the trust in proceedings to probate a will establishing or adding to a trust, to review the acts or accounts of a prior fiduciary and in proceedings involving creditors or other third parties; and orders binding a personal representative bind persons interested in the undistributed assets of a decedent's estate in actions or proceedings by or against the estate. If there is no conflict of interest and no conservator or guardian has been appointed, a parent may represent his minor child.

(c) An unborn or unascertained person who is not otherwise represented is bound by an order to the extent his interest is adequately represented by another party having a substantially identical interest in the proceeding.

(3) Notice is required as follows:

(a) Notice as prescribed by section 91A-1-401 shall be given to every interested person or to one who can bind an interested person as described in (2)(a) or (2)(b) above. Notice may be given both to a person and to another who may bind him.

(b) Notice is given to unborn or unascertained persons, who are not represented under (2)(a) or (2)(b) above, by giving notice to all known persons whose interests in the proceedings are substantially identical to those of the unborn or unascertained persons.

(4) At any point in a proceeding, a court may appoint a guardian ad

litem to represent the interest of a minor, an incapacitated, unborn, or unascertained person, or a person whose identity or address is unknown, if the court determines that representation of the interest otherwise would be inadequate. If not precluded by conflict of interests, a guardian ad litem may be appointed to represent several persons or interests. The court shall set out its reasons for appointing a guardian ad litem as a part of the record of the proceeding.

#### INTESTATE SUCCESSION AND WILLS INTESTATE SUCCESSION

Section 91A-2-101. **Intestate estate.** Any part of the estate of a decedent not effectively disposed of by his will passes to his heirs as prescribed in the following sections of this code.

Section 91A-2-102. **Share of spouse.** The intestate share of the surviving spouse is:

- (1) if there is no surviving issue, the entire intestate estate;
- (2) if there are surviving issue all of whom are issue of the surviving spouse also, the first fifty thousand dollars (\$50,000), plus one-half ( $\frac{1}{2}$ ) of the balance of the intestate estate;
- (3) if there are surviving issue one (1) or more of whom are not issue of the surviving spouse, one-half ( $\frac{1}{2}$ ) of the intestate estate.

Section 91A-2-103. **Share of heirs other than surviving spouse.** The part of the intestate estate not passing to the surviving spouse under section 91A-2-102, or the entire intestate estate if there is no surviving spouse, passes as follows:

- (1) to the issue of the decedent; if they are all of the same degree of kinship to the decedent they take equally, but if of unequal degree, then those of more remote degree take by representation;
- (2) if there is no surviving issue, to his parent or parents equally;
- (3) if there is no surviving issue or parent, to the brothers and sisters and the issue of each deceased brother or sister by representation; if there is no surviving brother or sister, the issue of brothers and sisters take equally if they are all of the same degree of kinship to the decedent, but if of unequal degree then those of more remote degree take by representation;
- (4) if there is no surviving issue, parent or issue of a parent, but the decedent is survived by one or more grandparents or issue of grandparents, half of the estate passes to the paternal grandparents if both survive, or to the surviving paternal grandparent, or to the issue of the paternal grandparents if both are deceased, the issue taking equally if they are all of the same degree of kinship to the decedent, but if of unequal degree those of more remote degree take by representation; and the other half passes to the maternal relatives in the same manner; but if there be no surviving grandparent or issue of grandparent on either the paternal or the maternal side, the entire estate passes to the relatives on the other side in the same manner as the half;

(5) if there is no surviving issue, parent or issue of a parent, grandparent or issue of a grandparent, the estate passes to the next of kin, in equal degree, except that where there are two (2) or more collateral kindred, in equal degree, but claiming through different ancestors, those who claim through the nearer ancestors must be preferred to those claiming through an ancestor more remote.

**Section 91A-2-104. Requirement that heir survive decedent for one hundred twenty (120) hours.** Any person who fails to survive the decedent by one hundred twenty (120) hours is deemed to have predeceased the decedent for purposes of homestead allowance, exempt property and intestate succession, and the decedent's heirs are determined accordingly. If the time of death of the decedent or of the person who would otherwise be an heir, or the times of death of both, cannot be determined, and it cannot be established that the person who would otherwise be an heir has survived the decedent by one hundred twenty (120) hours, it is deemed that the person failed to survive for the required period. This section is not to be applied where its application would result in a taking of intestate estate by the state under section 91A-2-105.

**Section 91A-2-105. No taker.** If there is no taker under the provisions of sections 91A-2-102 and 91A-2-103 the intestate estate passes to the state of Montana.

**Section 91A-2-106. Representation.** If representation is called for by this code, the estate is divided into as many shares as there are surviving heirs in the nearest degree of kinship and deceased persons in the same degree who left issue who survive the decedent, each surviving heir in the nearest degree receiving one (1) share and the share of each deceased person in the same degree being divided among his issue in the same manner.

**Section 91A-2-107. Kindred of half blood.** Relatives of the half blood inherit the same share they would inherit if they were of the whole blood.

**Section 91A-2-108. Afterborn heirs.** Relatives of the decedent conceived before his death but born thereafter inherit as if they had been born in the lifetime of the decedent.

**Section 91A-2-109. Meaning of child and related terms.** If, for the purposes of intestate succession, a relationship of parent and child must be established to determine succession by, through, or from a person:

- (1) An adopted person shall inherit as the child of an adopting parent.
- (2) In cases not covered by (1), a person born out of wedlock is a child of the mother. That person is also a child of the father, if:
  - (a) the natural parents participated in a marriage ceremony before or after the birth of the child, even though the attempted marriage is void; or
  - (b) the paternity is established by an adjudication before the death of the father or is established thereafter by clear and convincing proof, except that the paternity established under this subparagraph (b) is ineffective to qualify the father or his kindred to inherit from or through

the child unless the father has openly treated the child as his, and has not refused to support the child.

Section 91A-2-110. **Advancements.** If a person dies intestate as to all his estate, property which he gave in his lifetime to an heir is treated as an advancement against the latter's share of the estate only if declared in a contemporaneous writing by the decedent or acknowledged in writing by the heir to be an advancement. For this purpose the property advanced is valued as of the time the heir came into possession or enjoyment of the property or as of the time of death of the decedent, whichever first occurs. If the recipient of the property fails to survive the decedent, the property is not taken into account in computing the intestate share to be received by the recipient's issue, unless the declaration or acknowledgment provides otherwise.

Section 91A-2-111. **Alienage.** No person is disqualified to take as an heir because he or a person through whom he claims is an alien unless the country in which he resides does not allow reciprocity.

Section 91A-2-112. **Dower and curtesy abolished.** The estates of dower and curtesy are abolished.

#### ELECTIVE SHARE OF SURVIVING SPOUSE

Section 91A-2-201. **Right to elective share.** (1) If a married person domiciled in this state dies, the surviving spouse has a right of election to take an elective share of one-third ( $\frac{1}{3}$ ) of the augmented estate under the limitations and conditions hereinafter stated.

(2) If a married person not domiciled in this state dies, the right, if any, of the surviving spouse to take an elective share in property in this state is governed by the law of the decedent's domicile at death.

Section 91A-2-202. **Augmented estate.** The augmented estate means the estate reduced by funeral and administration expenses, homestead allowance, family allowances and exemptions, and enforceable claims, to which is added the sum of the following amounts:

(1) The value of property transferred by the decedent at any time during marriage, to or for the benefit of any person other than the surviving spouse, to the extent that the decedent did not receive adequate and full consideration in money or money's worth for the transfer, if the transfer is of any of the following types:

(a) any transfer under which the decedent retained at the time of his death the possession or enjoyment of, or right to income from, the property;

(b) any transfer to the extent that the decedent retained at the time of his death a power, either alone or in conjunction with any other person, to revoke or to consume, invade or dispose of the principal for his own benefit;

(c) any transfer whereby property is held at the time of decedent's death by decedent and another with right of survivorship;

(d) any transfer made within three (3) years of death of the decedent

to the extent that the aggregate transfers to any one donee in any of the years exceed three thousand dollars (\$3,000).

(2) Any transfer is excluded if made with the written consent or joinder of the surviving spouse. Property is valued as of the decedent's death except that property given irrevocably to a donee during lifetime of the decedent is valued as of the date the donee came into possession or enjoyment if that occurs first. Nothing herein shall cause to be included in the augmented estate any life insurance, accident insurance, joint annuity, or pension payable to a person other than the surviving spouse.

(3) The value of property owned by the surviving spouse at the decedent's death, plus the value of property transferred by the spouse at any time during marriage to any person other than the decedent which would have been includible in the spouse's augmented estate if the surviving spouse had predeceased the decedent, to the extent the owned or transferred property is derived from the decedent by any means other than testate or intestate succession without a full consideration in money or money's worth. For purposes of this subsection:

(a) Property derived from the decedent includes, but is not limited to, any beneficial interest of the surviving spouse in a trust created by the decedent during his lifetime, any property appointed to the spouse by the decedent's exercise of a general or special power of appointment also exercisable in favor of others than the spouse, any proceeds of insurance (including accidental death benefits) on the life of the decedent attributable to premiums paid by him, any lump sum immediately payable and the commuted value of the proceeds of annuity contracts under which the decedent was the primary annuitant attributable to premiums paid by him, the commuted value of amounts payable after the decedent's death under any public or private pension, disability compensation, death benefit or retirement plan, exclusive of the federal social security system, by reason of service performed or disabilities incurred by the decedent, and the value of the share of the surviving spouse resulting from rights in community property in this or any other state formerly owned with the decedent. Premiums paid by the decedent's employer, his partner, a partnership of which he was a member, or his creditors, are deemed to have been paid by the decedent.

(b) Property owned by the spouse at the decedent's death is valued as of the date of death. Property transferred by the spouse is valued at the time the transfer became irrevocable, or at the decedent's death, whichever occurred first. Income earned by included property prior to the decedent's death is not treated as property derived from the decedent.

(c) Property owned by the surviving spouse as of the decedent's death, or previously transferred by the surviving spouse, is presumed to have been derived from the decedent except to the extent that the surviving spouse establishes that it was derived from another source.

**Section 91A-2-203. Right of election personal to surviving spouse.** The right of election of the surviving spouse may be exercised only by him. In the case of a protected person, the right of election may be exercised only by order of the court in which protective proceedings as to his



property are pending, after finding that exercise is necessary to provide adequate support for the protected person during his probable life expectancy.

**Section 91A-2-204. Waiver of right to elect and of other rights.** The right of election of a surviving spouse and the rights of the surviving spouse to homestead allowance, exempt property and family allowance, or any of them, may be waived, wholly or partially, before or after marriage, by a written contract, agreement or waiver signed by the party waiving after fair disclosure. Unless it provides to the contrary, a waiver of "all rights" (or equivalent language) in the property or estate of a present or prospective spouse or a complete property settlement entered into after or in anticipation of separation or divorce is a waiver of all rights to elective share, homestead allowance, exempt property and family allowance by each spouse in the property of the other and a renunciation by each of all benefits which would otherwise pass to him from the other by intestate succession or by virtue of the provisions of any will executed before the waiver or property settlement.

**Section 91A-2-205. Proceeding for elective share; time limit.** (1) The surviving spouse may elect to take his elective share in the augmented net estate by filing in the court and mailing or delivering to the personal representative, if any, a petition for the elective share within six (6) months after the first publication of notice to creditors for filing claims which arose before the death of the decedent, or within one year of the date of death, whichever time limitation first expires. The court may extend the time for election as it sees fit for cause shown by the surviving spouse before the time for election has expired.

(2) The surviving spouse shall give notice of the time and place set for hearing to persons interested in the estate and to the distributees and recipients of portions of the augmented net estate whose interests will be adversely affected by the taking of the elective share.

(3) The surviving spouse may withdraw his demand for an elective share at any time before entry of a final determination by the court.

(4) After notice and hearing, the court shall determine the amount of the elective share and shall order its payment from the assets of the augmented net estate or by contribution as appears appropriate under section 91A-2-207. If it appears that a fund or property included in the augmented net estate has not come into the possession of the personal representative, or has been distributed by the personal representative, the court nevertheless shall fix the liability of any person who has any interest in the fund or property or who has possession thereof, whether as trustee or otherwise. The proceeding may be maintained against fewer than all persons against whom relief could be sought, but no person is subject to contribution in any greater amount than he would have been if relief had been secured against all persons subject to contribution.

(5) The order or judgment of the court may be enforced as necessary in suit for contribution or payment in other courts of this state or other jurisdictions.

**Section 91A-2-206. Effect of election on benefits by will or statute.**

(1) The surviving spouse's election of his elective share does not affect the share of the surviving spouse under the provisions of the decedent's will or intestate succession unless the surviving spouse also expressly renounces in the petition for an elective share the benefit of all or any of the provisions. If any provision is so renounced, the property or other benefit which would otherwise have passed to the surviving spouse thereunder is treated, subject to contribution under subsection 91A-2-207(2), as if the surviving spouse had predeceased the testator.

(2) A surviving spouse is entitled to homestead allowance, exempt property and family allowance whether or not he elects to take an elective share.

**Section 91A-2-207. Charging spouse with property received; liability of others for balance of elective share.** (1) In the proceeding for an elective share, property which is part of the augmented estate which passes or has passed to the surviving spouse by testate or intestate succession or other means and which has not been renounced, including that described in section 91A-2-202(3), is applied first to satisfy the elective share and to reduce the amount due from other recipients of portions of the augmented estate.

(2) Remaining property of the augmented estate is so applied that liability for the balance of the elective share of the surviving spouse is equitably apportioned among the recipients of the augmented estate in proportion to the value of their interests therein.

(3) Only original transferees from, or appointees of, the decedent and their donees, to the extent the donees have the property or its proceeds, are subject to the contribution to make up the elective share of the surviving spouse. A person liable to contribution may choose to give up the property transferred to him or to pay its value as of the time it is considered in computing the augmented estate.

#### SPOUSE AND CHILDREN UNPROVIDED FOR IN WILLS

**Section 91A-2-301. Omitted spouse.** (1) If a testator fails to provide by will for his surviving spouse who married the testator after the execution of the will, the omitted spouse shall receive the same share of the estate he would have received if the decedent left no will unless it appears from the will that the omission was intentional or the testator provided for the spouse by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by statements of the testator or from the amount of the transfer or other evidence.

(2) In satisfying a share provided by this section, the devises made by the will abate as provided in section 91A-3-902.

**Section 91A-2-302. Pretermitted children.** (1) If a testator fails to provide in his will for any of his children born or adopted after the execution of his will, the omitted child receives a share in the estate equal in value to that which he would have received if the testator had died intestate unless:

- (a) it appears from the will that the omission was intentional;

(b) when the will was executed the testator had one (1) or more children and devised substantially all his estate to the other parent of the omitted child; or

(c) the testator provided for the child by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by statements of the testator or from the amount of the transfer or other evidence.

(2) If at the time of execution of the will the testator fails to provide in his will for a living child solely because he believes the child to be dead, the child receives a share in the estate equal in value to that which he would have received if the testator had died intestate.

(3) In satisfying a share provided by this section, the devises made by the will abate as provided in section 91A-3-902.

#### EXEMPT PROPERTY AND ALLOWANCES

Section 91A-2-401. **Homestead allowance.** (1) A surviving spouse of a decedent who was domiciled in this state is entitled to a homestead allowance as provided in sections 33-101 through 33-129, R.C.M. 1947. If there is no surviving spouse, each minor child and each dependent child of the decedent is entitled to a homestead allowance as provided in sections 33-101 through 33-129, R.C.M. 1947, divided by the number of minor and dependent children of the decedent. The homestead allowance is exempt from and has priority over all claims against the estate. Homestead allowance is in addition to any share passing to the surviving spouse or minor or dependent child by the will of the decedent unless otherwise provided, by intestate succession or by way of elective share.

(2) If no homestead has been selected, designated and recorded prior to the decedent's death, the personal representative shall select, designate, set apart and cause to be recorded a homestead for the use of the surviving spouse and minor children and this section shall take effect as if the homestead had been declared before the decedent's death.

Section 91A-2-402. **Exempt property.** In addition to the homestead allowance, the surviving spouse of a decedent who was domiciled in this state is entitled from the estate to value not exceeding three thousand five hundred dollars (\$3,500) in excess of any security interests therein in household furniture, automobiles, furnishings, appliances and personal effects. If there is no surviving spouse, children of the decedent are entitled jointly to the same value. If encumbered chattels are selected and if the value in excess of security interests, plus that of other exempt property, is less than three thousand five hundred dollars (\$3,500), or if there is not three thousand five hundred dollars (\$3,500) worth of exempt property in the estate, the spouse or children are entitled to other assets of the estate, if any, to the extent necessary to make up the three thousand five hundred dollars (\$3,500) value. Rights to exempt property and assets needed to make up a deficiency of exempt property have priority over all claims against the estate, except that the right to any assets to make up a deficiency of exempt property shall abate as necessary to permit prior payment of homestead allowance and family allowance. These rights are in addition to any benefit or share passing to the surviving spouse or chil-

dren by the will of the decedent unless otherwise provided, by intestate succession, or by way of elective share.

**Section 91A-2-403. Family allowance.** In addition to the right to homestead allowance and exempt property, if the decedent was domiciled in this state, the surviving spouse and minor children whom the decedent was obligated to support and children who were in fact being supported by him are entitled to a reasonable allowance in money out of the estate for their maintenance during the period of administration, which allowance may not continue for longer than one (1) year if the estate is inadequate to discharge allowed claims. The allowance may be paid as a lump sum or in periodic installments. It is payable to the surviving spouse, if living, for the use of the surviving spouse and minor and dependent children; otherwise to the children, or persons having their care and custody; but in case any minor child or dependent child is not living with the surviving spouse, the allowance may be made partially to the child or his guardian or other person having his care and custody, and partially to the spouse, as their needs may appear. The family allowance is exempt from and has priority over all claims but not over the homestead allowance.

The family allowance is not chargeable against any benefit or share passing to the surviving spouse or children by the will of the decedent unless otherwise provided, by intestate succession, or by way of elective share. The death of any person entitled to family allowance terminates his right to allowances not yet paid.

**Section 91A-2-404. Source, determination and documentation.** If the estate is otherwise sufficient, property specifically devised is not used to satisfy rights to homestead and exempt property. Subject to this restriction, the surviving spouse, the guardians of the minor children, or children who are adults may select property of the estate as homestead allowance and exempt property. The personal representative may make these selections if the surviving spouse, the children or the guardians of the minor children are unable or fail to do so within a reasonable time or if there are no guardians of the minor children. The personal representative may execute an instrument or deed of distribution to establish the ownership of property taken as homestead allowance or exempt property. He may determine the family allowance in a lump sum not exceeding six thousand dollars (\$6,000) or periodic installments not exceeding five hundred dollars (\$500) per month for one (1) year, and may disburse funds of the estate in payment of the family allowance and any part of the homestead allowance payable in cash. The personal representative or any interested person aggrieved by any selection, determination, payment, proposed payment, or failure to act under this section may petition the court for appropriate relief, which relief may provide a family allowance larger or smaller than that which the personal representative determined or could have determined.

**Section 91A-2-405. Allowances and exempt property included in inheritance tax exemption.** The allowances and exempt property provided for in sections 91A-2-401 through 91A-2-403 are to be included in computing the exemptions from inheritance tax provided for in section 91-4414 and are not in addition to such inheritance tax exemptions.

#### WILLS

**Section 91A-2-501. Who may make a will.** Any person eighteen (18)

or more years of age who is of sound mind may make a will.

Section 91A-2-502. **Execution.** Except as provided for holographic wills, writings within section 91A-2-513, and wills within section 91A-2-506, every will shall be in writing signed by the testator or in the testator's name by some other person in the testator's presence and by his direction, and shall be signed by at least two (2) persons each of whom witnessed either the signing or the testator's acknowledgment of the signature or of the will.

Section 91A-2-503. **Holographic will.** A will which does not comply with section 91A-2-502 is valid as a holographic will, whether or not witnessed, if the signature and the material provisions are in the handwriting of the testator.

Section 91A-2-504. **Self-proved will.** An attested will may at the time of its execution or at any subsequent date be made self-proved, by the acknowledgment thereof by the testator and the affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of this state, and evidenced by the officer's certificate, under official seal, attached or annexed to the will in form and content substantially as follows:

THE STATE OF .....  
COUNTY OF .....

We, ....., and ....., the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the undersigned authority that the testator signed and executed the instrument as his last will and that he had signed willingly or directed another to sign for him, and that he executed it as his free and voluntary act for the purposes therein expressed; and that each of the witnesses, in the presence and hearing of the testator, signed the will as witness and to the best of his knowledge the testator was at that time 18 or more years of age, of sound mind and under no constraint or undue influence.

.... Testator

.... Witness

.... Witness

Subscribed, sworn to and acknowledged before me by ....., the testator, and subscribed and sworn to before me by .... and ....., witnesses, this .... day of ....., .....

(SEAL)

(Signed)....

....(Official capacity of officer)

Section 91A-2-505. **Who may witness; effect of witness by beneficiary.** (1) Any person generally competent to be a witness may act as a witness to a will.

(2) A will is not invalid because the will is signed by an interested witness.

(3) All beneficial devises made in any will to a subscribing witness thereto, are void, unless there are two (2) other competent subscribing witnesses to the same; but a mere charge on the estate of the testator does not prevent his creditors from being competent witnesses to his will.

(4) If a witness, to whom any beneficial devise, void under the preceding section, is made, would have been entitled to any share of the estate of the testator if the testator had died intestate, such witness succeeds to so much of the share as would be distributed to him under intestate succession, not exceeding the devise or bequest made to him in the will.

**Section 91A-2-506. Choice of law as to execution.** A written will is valid if executed in compliance with section 91A-2-502 or 91A-2-503 or if its execution complies with the law at the time of execution of the place where the will is executed, or of the law of the place where at the time of execution or at the time of death the testator is domiciled, has a place of abode or is a national.

**Section 91A-2-507. Revocation by writing or by act.** A will or any part thereof is revoked (1) by a subsequent will which revokes the prior will or part expressly or by inconsistency; or

(2) by being burned, torn, canceled, obliterated, or destroyed, with the intent and for the purpose of revoking it by the testator or by another person in his presence and by his direction.

**Section 91A-2-508. Revocation by divorce or annulment; no revocation by other change in circumstances.** If after executing a will the testator is divorced or his marriage annulled, the divorce or annulment revokes any disposition or appointment of property made by the will to the former spouse, any provision conferring a general or special power of appointment on the former spouse, and any nomination of the former spouse as executor, trustee, conservator, or guardian, unless the will expressly provides otherwise. Property prevented from passing to a former spouse because of revocation by divorce or annulment passes as if the former spouse failed to survive the decedent, and other provisions conferring some power or office on the former spouse are interpreted as if the spouse failed to survive the decedent. If provisions are revoked solely by this section, they are revived by testator's remarriage to the former spouse. For purposes of this section, divorce or annulment means any divorce or annulment which would exclude the spouse as a surviving spouse within the meaning of section 91A-2-802(2). A decree of separation which does not terminate the status of husband and wife is not a divorce for purposes of this section. No change of circumstances other than as described in this section revokes a will.

**Section 91A-2-509. Revival of revoked will.** (1) If a second will which, had it remained effective at death, would have revoked the first will in whole or in part, is thereafter revoked by acts under section 91A-2-507, the first will is revoked in whole or in part unless it is evident from the circumstances of the revocation of the second will or from testator's contemporaneous or subsequent declarations that he intended the first will to take effect as executed.

(2) If a second will which, had it remained effective at death, would

have revoked the first will in whole or in part, is thereafter revoked by a third will, the first will is revoked in whole or in part, except to the extent it appears from the terms of the third will that the testator intended the first will to take effect.

**Section 91A-2-510. Incorporation by reference.** Any writing in existence when a will is executed may be incorporated by reference if the language of the will manifests this intent and describes the writing sufficiently to permit its identification.

**Section 91A-2-511. Testamentary additions to trusts.** A devise or bequest, the validity of which is determinable by the law of this state, may be made by a will to the trustee of a trust established or to be established by the testator or by the testator and some other person or by some other person (including a funded or unfunded life insurance trust, although the trustor has reserved any or all rights of ownership of the insurance contracts) if the trust is identified in the testator's will and its terms are set forth in a written instrument (other than a will) executed before or concurrently with the execution of the testator's will or in the valid last will of a person who has predeceased the testator (regardless of the existence, size, or character of the corpus of the trust). The devise is not invalid because the trust is amendable or revocable, or because the trust was amended after the execution of the will or after the death of the testator. Unless the testator's will provides otherwise, the property so devised is not deemed to be held under a testamentary trust of the testator but becomes a part of the trust to which it is given and shall be administered and disposed of in accordance with the provisions of the instrument or will setting forth the terms of the trust, including any amendments thereto made before the death of the testator (regardless of whether made before or after the execution of the testator's will), and, if the testator's will so provides, including any amendments to the trust made after the death of the testator. A revocation or termination of the trust before the death of the testator causes the devise to lapse.

**Section 91A-2-512. Events of independent significance.** A will may dispose of property by reference to acts and events which have significance apart from their effect upon the dispositions made by the will, whether they occur before or after the execution of the will or before or after the testator's death. The execution or revocation of a will of another person is such an event.

**Section 91A-2-513. Separate writing indentifying bequest of tangible property.** Whether or not the provisions relating to holographic wills apply, a will may refer to a written statement or list to dispose of items of tangible personal property not otherwise specifically disposed of by the will, other than money, evidences of indebtedness, documents of title, and securities, and property used in trade or business. To be admissible under this section as evidence of the intended disposition, the writing must either be in the handwriting of the testator or be signed by him and must describe the items and the devisees with reasonable certainty. The writing may be referred to as one to be in existence at the time of the testator's death; it may be prepared before or after the execution of the will; it may be altered by the testator after its preparation; and it may be a writing which has no significance apart from its effect upon the dispositions made by the will.

## RULES OF CONSTRUCTION

Section 91A-2-601. **Requirement that devisee survive testator by one hundred twenty (120) hours.** A devisee who does not survive the testator by one hundred twenty (120) hours is treated as if he predeceased the testator, unless the will of decedent contains some language dealing explicitly with simultaneous deaths or deaths in a common disaster, or requiring that the devisee survive the testator or survive the testator for a stated period in order to take under the will.

Section 91A-2-602. **Choice of law as to meaning and effect of wills.** The meaning and legal effect of a disposition in a will shall be determined by the local law of a particular state selected by the testator in his instrument unless the application of that law is contrary to the public policy of this state otherwise applicable to the disposition.

Section 91A-2-603. **Rules of construction and intention.** The intention of a testator as expressed in his will controls the legal effect of his dispositions. The rules of construction expressed in the succeeding sections of this part apply unless a contrary intention is indicated by the will.

Section 91A-2-604. **Construction that will passes all property; after-acquired property.** A will is construed to pass all property which the testator owns at his death including property acquired after the execution of the will.

Section 91A-2-605. **Anti-lapse; deceased devisee; class gift.** If a devisee who is a grandparent or a lineal descendant of a grandparent of the testator is dead at the time of execution of the will, fails to survive the testator, or is treated as if he predeceased the testator, the issue of the deceased devisee who survive the testator by one hundred twenty (120) hours take in place of the deceased devisee and if they are all of the same degree of kinship to the devisee they take equally, but if of unequal degree then those of more remote degree take by representation. One who would have been a devisee under a class gift if he had survived the testator is treated as a devisee for purposes of this section whether his death occurred before or after the execution of the will.

Section 91A-2-606. **Failure of testamentary provision.** (1) Except as provided in section 91A-2-605 if a devise other than a residuary devise fails for any reason, it becomes a part of the residue.

(2) Except as provided in section 91A-2-605 if the residue is devised to two (2) or more persons and the share of one (1) of the residuary devisees fails for any reason, his share passes to the other residuary devisee, or to other residuary devisees in proportion to their interests in the residue.

Section 91A-2-607. **Change in securities; accessions; nonademption.** (1) If the testator intended a specific devise of certain securities rather than the equivalent value thereof, the specific devisee is entitled only to:

(a) as much of the devised securities as is a part of the estate at time of the testator's death;

(b) any additional or other securities of the same entity owned by the testator by reason of action initiated by the entity;



(c) securities of another entity owned by the testator as a result of a merger, consolidation, reorganization or other similar action initiated by the entity; and

(d) any additional securities of the entity owned by the testator as a result of a plan of reinvestment if it is a regulated investment company.

(2) Distributions prior to death with respect to a specifically devised security not provided for in subsection (1) are not part of the specific devise.

**Section 91A-2-608. Nonademption of specific devises in certain cases; sale by conservator; unpaid proceeds of sale, condemnation or insurance.** (1) If specifically devised property is sold by a conservator, or if a condemnation award or insurance proceeds are paid to a conservator as a result of condemnation, fire, or casualty, the specific devisee has the right to a pecuniary devise equal to so much of the sale price, condemnation award or insurance proceeds as remains in the estate and is identifiable at the time of the decedent's death.

This subsection does not apply if subsequent to the sale, condemnation, or casualty, it is adjudicated that the disability of the testator has ceased and the testator survives the adjudication by one (1) year. The right of the specific devisee under this subsection is reduced by any right he has under subsection (2).

(2) A specific devisee has the right to the remaining specifically devised property and:

(a) any balance of the purchase price (together with any security interest) owing from a purchaser to the testator at death by reason of sale of the property;

(b) any amount of a condemnation award for the taking of the property unpaid at death;

(c) any proceeds unpaid at death on fire or casualty insurance on the property; and

(d) property owned by testator at his death as a result of foreclosure, or obtained in lieu of foreclosure, of the security for a specifically devised obligation.

**Section 91A-2-609. Non-exoneration.** A specific devise passes subject to any security interest existing at the date of death, without right of exoneration, regardless of a general directive in the will to pay debts.

**Section 91A-2-610. Exercise of power of appointment.** A general residuary clause in a will, or a will making general disposition of all of the testator's property, does not exercise a power of appointment held by the testator unless specific reference is made to the power or there is some other indication of intention to include the property subject to the power.

**Section 91A-2-611. Construction of generic terms to accord with relationships as defined for intestate succession.** Halfbloods, adopted persons and persons born out of wedlock are included in class gift terminology and terms of relationship in accordance with rules for determining relationships for purposes of intestate succession.

Section 91A-2-612. **Ademption by satisfaction.** Property which a testator gave in his lifetime to a person is treated as a satisfaction of a devise to that person in whole or in part, only if the will provides for deduction of the lifetime gift, or the testator declares in a contemporaneous writing that the gift is to be deducted from the devise or is in satisfaction of the devise, or the devisee acknowledges in writing that the gift is in satisfaction. For purpose of partial satisfaction, property given during lifetime is valued as of the time the devisee came into possession or enjoyment of the property or as of the time of death of the testator, whichever occurs first.

#### CONTRACTUAL ARRANGEMENTS RELATING TO DEATH

Section 91A-2-701. **Contracts concerning succession.** A contract to make a will or devise, or not to revoke a will or devise, or to die intestate, if executed after the effective date of this act, can be established only by (1) provisions of a will stating material provisions of the contract;

(2) an express reference in a will to a contract and extrinsic evidence proving the terms of the contract; or

(3) a writing signed by the decedent evidencing the contract.

The execution of a joint will or mutual wills does not create a presumption of a contract not to revoke the will or wills.

#### GENERAL PROVISIONS

Section 91A-2-801. **Renunciation of succession.** (1) A person (or his personal representative) who is an heir, devisee, person succeeding to a renounced interest, beneficiary under a testamentary instrument or person designated to take pursuant to a power of appointment exercised by a testamentary instrument may renounce in whole or in part the succession to any property or interest therein by filing a written instrument within the time and at the place hereinafter provided. The instrument shall

(a) describe the property or part thereof or interest therein renounced,

(b) be signed by the person renouncing, and

(c) declare the renunciation and the extent thereof.

(2) The writing specified in (1) must be filed within six (6) months after the death of the decedent or the donee of the power, or if the taker of the property is not then finally ascertained not later than six (6) months after the event by which the taker or the interest is finally ascertained. The writing must be filed in the court of the county where proceedings concerning the decedent's estate are pending, or where they would be pending if commenced. A copy of the writing also shall be mailed to the personal representative of the decedent.

(3) Unless the decedent or donee of the power has otherwise indicated by his will, the interest renounced, and any future interest which is to take effect in possession or enjoyment at or after the termination of the interest renounced, passes as if the person renouncing had predeceased the decedent, or if the person renouncing is one designated to take pur-

suant to a power of appointment exercised by a testamentary instrument, as if the person renouncing had predeceased the donee of the power. In every case the renunciation relates back for all purposes to the date of death of the decedent or the donee, as the case may be.

(4) Any assignment, conveyance, encumbrance, pledge or transfer of property therein or any contract therefor, written waiver of the right to renounce or any acceptance of property by an heir, devisee, person succeeding to a renounced interest, beneficiary or person designated to take pursuant to a power of appointment exercised by testamentary instrument, or sale or other disposition of property pursuant to judicial process, made before the expiration of the period in which he is permitted to renounce, bars the right to renounce as to the property.

(5) The right to renounce granted by this section exists irrespective of any limitation on the interest of the person renouncing in the nature of a spendthrift provision or similar restriction.

(6) This section does not abridge the right of any person to assign, convey, release, or renounce any property arising under any other section of this code or other statute.

(7) Any interest in property which exists on the effective date of this section, but which has not then become indefeasibly fixed both in quality and quantity, or the taker of which has not then become finally ascertained, may be renounced after the effective date of this section as provided herein. An interest which has arisen prior to the effective date of this section in any person other than the person renouncing is not destroyed or diminished by any action of the person renouncing taken under this section.

**Section 91A-2-802. Effect of divorce, annulment and decree of separation.** (1) A person who is divorced from the decedent or whose marriage to the decedent has been annulled is not a surviving spouse unless, by virtue of a subsequent marriage, he is married to the decedent at the time of death. A decree of separation which does not terminate the status of husband and wife is not a divorce for purposes of this section.

(2) For purposes of sections 91A-2-101 through 91A-2-404 and of 91A-3-203, a surviving spouse does not include:

(a) a person who obtains or consents to a final decree or judgment of divorce from the decedent or an annulment of their marriage, which decree or judgment is not recognized as valid in this state, unless they subsequently participate in a marriage ceremony purporting to marry each to the other, or subsequently live together as man and wife;

(b) a person who, following a decree or judgment of divorce or annulment obtained by the decedent, participates in a marriage ceremony with a third person; or

(c) a person who was a party to a valid proceeding concluded by an order purporting to terminate all marital property rights.

**Section 91A-2-803. Effect of homicide on intestate succession, wills, joint assets, life insurance and beneficiary designations.** (1)

A surviving spouse, heir or devisee who feloniously and intentionally kills the decedent is not entitled to any benefits under the will or under this article, and the estate of decedent passes as if the killer had predeceased the decedent. Property appointed by the will of the decedent to or for the benefit of the killer passes as if the killer had predeceased the decedent.

(2) Any joint tenant who feloniously and intentionally kills another joint tenant thereby effects a severance of the interest of the decedent so that the share of the decedent passes as his property and the killer has no rights by survivorship. This provision applies to joint tenancies in real and personal property, joint accounts in banks, savings and loan associations, credit unions and other institutions, and any other form of co-ownership with survivorship incidents.

(3) A named beneficiary of a bond, life insurance policy, or other contractual arrangement who feloniously and intentionally kills the principal obligee or the person upon whose life the policy is issued is not entitled to any benefit under the bond, policy or other contractual arrangement, and it becomes payable as though the killer had predeceased the decedent.

(4) Any other acquisition of property or interest by the killer shall be treated in accordance with the principles of this section.

(5) A final judgment of conviction of felonious and intentional killing is conclusive for purposes of this section. In the absence of a conviction of felonious and intentional killing the court may determine by a preponderance of evidence whether the killing was felonious and intentional for purposes of this section.

(6) This section does not affect the rights of any person who, before rights under this section have been adjudicated, purchases from the killer for value and without notice property which the killer would have acquired except for this section, but the killer is liable for the amount of the proceeds or the value of the property. Any insurance company, bank, or other obligor making payment according to the terms of its policy or obligation is not liable by reason of this section unless prior to payment it has received at its home office or principal address written notice of a claim under this section.

### CUSTODY AND DEPOSIT OF WILLS

Section 91A-2-901. **Deposit of will with court for safekeeping.** A will may be deposited by the testator or his agent with any court for safekeeping, under rules of the court. The will shall be kept confidential. During the testator's lifetime a deposited will shall be delivered only to him or to a person authorized in writing signed by him to receive the will. A conservator may be allowed to examine a deposited will of a protected testator under procedures designed to maintain the confidential character of the document to the extent possible, and to assure that it will be resealed and left on deposit after the examination. Upon being informed of the testator's death, the court shall notify any person designated to receive the will and deliver it to him on request; or the court may deliver the will to the appropriate court.

Section 91A-2-902. **Duty of custodian of will; liability.** After the

death of a testator and on request of an interested person, any person having custody of a will of the testator shall deliver it with reasonable promptness to a person able to secure its probate and if none is known, to an appropriate court. Any person who willfully fails to deliver a will is liable to any person aggrieved for the damages which may be sustained by the failure. Any person who willfully refuses or fails to deliver a will after being ordered by the court in a proceeding brought for the purpose of compelling delivery is subject to penalty for contempt of court.

#### PROBATE OF WILLS AND ADMINISTRATION GENERAL PROVISIONS

**Section 91A-3-101. Devolution of estate at death; restrictions.** The power of a person to leave property by will, and the rights of creditors, devisees, and heirs to his property are subject to the restrictions and limitations contained in this code to facilitate the prompt settlement of estates. Upon the death of a person, his real and personal property devolves to the persons to whom it is devised by his last will or to those indicated as substitutes for them in cases involving lapse, renunciation, or other circumstances affecting the devolution of testate estates, or in the absence of testamentary disposition, to his heirs, or to those indicated as substitutes for them in cases involving renunciation or other circumstances affecting devolution of intestate estates, subject to homestead allowance, exempt property and family allowance, to rights of creditors, elective share of the surviving spouse, and to administration.

**Section 91A-3-102. Necessity of order of probate for will.** Except as provided in section 91A-3-1201, to be effective to prove the transfer of any property or to nominate an executor, a will must be declared to be valid by an order of informal probate by the clerk, or an adjudication of probate by the court, except that a duly executed and unrevoked will which has not been probated may be admitted as evidence of a devise if (1) no court proceeding concerning the succession or administration of the estate has occurred, and

(2) either the devisee or his successors and assigns possessed the property devised in accordance with the provisions of the will, or the property devised was not possessed or claimed by anyone by virtue of the decedent's title during the time period for testacy proceedings.

**Section 91A-3-103. Necessity of appointment for administration.** Except as otherwise provided in sections 91A-4-101 through 91A-4-401, inclusive, to acquire the powers and undertake the duties and liabilities of a personal representative of a decedent, a person must be appointed by order of the court or clerk, qualify and be issued letters. Administration of an estate is commenced by the issuance of letters.

**Section 91A-3-104. Claims against decedent; necessity of administration.** No proceeding to enforce a claim against the estate of a decedent or his successors may be revived or commenced before the appointment of a personal representative. After the appointment and until distribution, all proceedings and actions to enforce a claim against the estate are governed by the procedure prescribed by sections 91A-3-101 through 91A-3-1203. After distribution a creditor whose claim has not been barred

may recover from the distributees as provided in section 91A-3-1005 or from a former personal representative individually liable as provided in section 91A-3-1006. This section has no application to a proceeding by a secured creditor of the decedent to enforce his right to his security except as to any deficiency judgment which might be sought therein.

**Section 91A-3-105. Proceedings affecting devolution and administration; jurisdiction of subject matter.** Persons interested in decedents' estate may apply to the clerk for determination in the informal proceedings provided in sections 91A-3-301 through 91A-3-311 of this act, and may petition the court for orders in formal proceedings within the court's jurisdiction including but not limited to those described in sections 91A-3-401 through 91A-3-505 of this act. The district court has exclusive jurisdiction of all probate matters.

**Section 91A-3-106. Proceedings within exclusive jurisdiction of court.** In proceedings within the exclusive jurisdiction of the court where notice is required by this code or by rule, interested persons may be bound by the orders of the court in respect to property in or subject to the laws of this state by notice in conformity with section 91A-1-401. An order is binding as to all who are given notice of the proceeding though less than all interested persons are notified.

**Section 91A-3-107. Scope of proceedings; proceedings independent; exception.** Unless supervised administration as described in sections 91A-3-501 through 91A-3-505 is involved, (1) each proceeding before the court or clerk is independent of any other proceeding involving the same estate;

(2) petitions for formal orders of the court may combine various requests for relief in a single proceeding if the orders sought may be finally granted without delay. Except as required for proceedings which are particularly described by other sections of this code, no petition is defective because it fails to embrace all matters which might then be the subject of a final order;

(3) proceedings for probate of wills or adjudications of no will may be combined with proceedings for appointment of personal representatives; and

(4) a proceeding for appointment of a personal representative is concluded by an order making or declining the appointment.

**Section 91A-3-108. Probate, testacy and appointment proceedings; time limit; exception.** No informal probate or appointment proceeding or formal testacy or appointment proceeding, other than a proceeding to probate a will previously probated at the testator's domicile and appointment proceedings relating to an estate in which there has been a prior appointment, may be commenced more than three (3) years after the decedent's death, except (1) if a previous proceeding was dismissed because of doubt about the fact of the decedent's death, appropriate probate, appointment or testacy proceedings may be maintained at any time thereafter upon a finding that the decedent's death occurred prior to the initiation of the previous proceeding and the applicant or petitioner has not delayed unduly in initiating the subsequent proceeding;

(2) appropriate probate, appointment or testacy proceedings may be maintained in relation to the estate of an absent, disappeared or missing person for whose estate a conservator has been appointed, at any time within three (3) years after the conservator becomes able to establish the death of the protected person; and

(3) a proceeding to contest an informally probated will and to secure appointment of the person with legal priority for appointment in the event the contest is successful, may be commenced within the later of twelve (12) months from the informal probate or three (3) years from the decedent's death.

These limitations do not apply to proceedings to construe probated wills or determine heirs of an intestate, nor do they limit the right of interested persons to commence informal probate or appointment proceedings or formal testacy or appointment proceedings at any time after three (3) years from the decedent's death if there have been no previous formal or informal probate or appointment proceedings commenced in respect of that decedent. In cases under (1) or (2) above, the date on which a testacy or appointment proceeding is properly commenced shall be deemed to be the date of the decedent's death for purposes of other limitations provisions of this code which relate to the date of death.

**Section 91A-3-109. Statutes of limitation on decedent's cause of action.** No statute of limitation running on a cause of action belonging to a decedent which had not been barred as of the date of his death, shall apply to bar a cause of action surviving the decedent's death sooner than four (4) months after death. A cause of action which, but for this section, would have been barred less than four (4) months after death, is barred after four (4) months unless tolled.

#### **VENUE FOR PROBATE AND ADMINISTRATION; PRIORITY TO ADMINISTER; DEMAND FOR NOTICE**

**Section 91A-3-201. Venue for first and subsequent estate proceedings; location of property.** (1) Venue for the first informal or formal testacy or appointment proceedings after a decedent's death is:

(a) in the county where the decedent had his domicile at the time of his death; or

(b) if the decedent was not domiciled in this state, in any county where property of the decedent was located at the time of his death.

(2) Venue for all subsequent proceedings within the exclusive jurisdiction of the court is in the place where the initial proceeding occurred, unless the initial proceeding has been transferred as provided in section 91A-1-303 or (3) of this section.

(3) If the first proceeding was informal, on application of an interested person and after notice to the proponent in the first proceeding, the court, upon finding that venue is elsewhere, may transfer the proceeding and the file to the other court.

(4) For the purpose of aiding determinations concerning location of assets which may be relevant in cases involving nondomiciliaries, a debt,

other than one evidenced by investment or commercial paper or other instrument in favor of a nondomiciliary, is located where the debtor resides or, if the debtor is a person other than an individual, at the place where it has its principal office. Commercial paper, investment paper and other instruments are located where the instrument is. An interest in property held in trust is located where the trustee may be sued.

**Section 91A-3-202. Appointment or testacy proceedings; conflicting claim of domicile in another state.** If conflicting claims as to the domicile of a decedent are made in a formal testacy or appointment proceeding commenced in this state, and in a testacy or appointment proceeding after notice pending at the same time in another state, the court of this state must stay, dismiss, or permit suitable amendment in, the proceeding here unless it is determined that the local proceeding was commenced before the proceeding elsewhere. The determination of domicile in the proceeding first commenced must be accepted as determinative in the proceeding in this state.

**Section 91A-3-203. Priority among persons seeking appointment as personal representative.** (1) Whether the proceedings are formal or informal, persons who are not disqualified have priority for appointment in the following order:

- (a) the person with priority as determined by a probated will including a person nominated by a power conferred in a will;
- (b) the surviving spouse of the decedent who is a devisee of the decedent;
- (c) other devisees of the decedent;
- (d) the surviving spouse of the decedent;
- (e) other heirs of the decedent;
- (f) public administrator;
- (g) forty-five (45) days after the death of the decedent, any creditor.

(2) An objection to an appointment can be made only in formal proceedings. In case of objection the priorities stated in (1) apply except that

(a) if the estate appears to be more than adequate to meet exemptions and costs of administration but inadequate to discharge anticipated unsecured claims, the court, on petition of creditors, may appoint any qualified person;

(b) in case of objection to appointment of a person other than one whose priority is determined by will by an heir or devisee appearing to have a substantial interest in the estate, the court may appoint a person who is acceptable to heirs and devisees whose interests in the estate appear to be worth in total more than half of the probable distributable value, or, in default of this accord any suitable person.



(3) A person entitled to letters under (b) through (e) of (1) above, may nominate a qualified person to act as personal representative. Any person entitled to letters may renounce his right to nominate or to an appointment by appropriate writing filed with the court. When two (2) or more persons share a priority, those of them who do not renounce must concur in nominating another to act for them, or in applying for appointment.

(4) Conservators of the estates of protected persons, or if there is no conservator, any guardian except a guardian ad litem of a minor or incapacitated person, may exercise the same right to nominate, to object to another's appointment, or to participate in determining the preference of a majority in interest of the heirs and devisees that the protected person or ward would have if qualified for appointment.

(5) Appointment of one who does not have priority, including priority resulting from renunciation or nomination determined pursuant to this section, may be made only in formal proceedings. Before appointing one without priority, the court must determine that those having priority, although given notice of the proceedings, have failed to request appointment or to nominate another for appointment, and that administration is necessary.

(6) No person is qualified to serve as a personal representative who is:

- (a) under the age of eighteen (18);
- (b) a person whom the court finds unsuitable in formal proceedings.

(7) A personal representative appointed by a court of the decedent's domicile has priority over all other persons except where the decedent's will nominates different persons to be personal representative in this state and in the state of domicile. The domiciliary personal representative may nominate another, who shall have the same priority as the domiciliary personal representative.

(8) This section governs priority for appointment of a successor personal representative but does not apply to the selection of a special administrator.

**Section 91A-3-204. Demand for notice of order or filing concerning decedent's estate.** Any person desiring notice of any order or filing pertaining to a decedent's estate in which he has a financial or property interest, may file a demand for notice with the court at any time after the death of the decedent stating the name of the decedent, the nature of his interest in the estate, and the demandant's address or that of his attorney. The clerk shall mail a copy of the demand to the personal representative if one has been appointed. After filing of a demand, no order or filing to which the demand relates shall be made or accepted without notice as prescribed in section 91A-1-401 to the demandant or his attorney. The validity of an order which is issued or filing which is accepted without compliance with this requirement shall not be affected by the error, but the petitioner receiving the order or the person making the filing may be liable for any damage caused by the absence of notice. The requirement of notice arising from a demand under this provision may be waived in writing by the demandant and shall cease upon the termination of his interest in the estate.

INFORMAL PROBATE AND APPOINTMENT  
PROCEEDINGS

Section 91A-3-301. **Informal probate or appointment proceedings; application; contents.** Applications for informal probate or informal appointment shall be directed to the clerk, and verified by the applicant to be accurate and complete to the best of his knowledge and belief as to the following information:

(1) Every application for informal probate of a will or for informal appointment of a personal representative, other than a special, ancillary or successor representative, shall contain the following:

- (a) a statement of the interest of the applicant;
- (b) the name and date of death of the decedent, his age, and the county and state of his domicile at the time of death, and the names and addresses of the spouse, children, heirs and devisees and the ages of any who are minors so far as known or ascertainable with reasonable diligence by the applicant;
- (c) if the decedent was not domiciled in the state at the time of his death, a statement showing venue;
- (d) a statement identifying and indicating the address of any personal representative of the decedent appointed in this state or elsewhere whose appointment has not been terminated;
- (e) a statement indicating whether the applicant has received a demand for notice, or is aware of any demand for notice of any probate or appointment proceeding concerning the decedent that may have been filed in this state or elsewhere.

(2) An application for informal probate of a will shall state the following in addition to the statements required by (1):

- (a) that the original of the decedent's last will is in the possession of the court, or accompanies the application, or that an authenticated copy of a will probated in another jurisdiction accompanies the application;
- (b) that the applicant, to the best of his knowledge, believes the will to have been validly executed;
- (c) that after the exercise of reasonable diligence, the applicant is unaware of any instrument revoking the will, and that the applicant believes that the instrument which is the subject of the application is the decedent's last will;

(d) that the time limit for informal probate as provided in this article has not expired either because three (3) years or less have passed since the decedent's death, or, if more than three (3) years from death have passed, that circumstances as described by section 91A-3-108 authorizing tardy probate have occurred.

(3) An application for informal appointment of a personal representative to administer an estate under a will shall describe the will by date of execution and state the time and place of probate or the pending application or petition for probate. The application for appointment shall adopt the statements in the application or petition for probate and state the name, address and priority for appointment of the person whose appointment is sought.

(4) An application for informal appointment of an administrator in intestacy shall state in addition to the statements required by (1):

(a) that after the exercise of reasonable diligence, the applicant is unaware of any unrevoked testamentary instrument relating to property having a situs in this state under section 91A-1-301, or, a statement why any such instrument of which he may be aware is not being probated;

(b) the priority of the person whose appointment is sought and the names of any other persons having a prior or equal right to the appointment under section 91A-3-203.

(5) An application for appointment of a personal representative to succeed a personal representative appointed under a different testacy status shall refer to the order in the most recent testacy proceeding, state the name and address of the person whose appointment is sought and of the person whose appointment will be terminated if the application is granted, and describe the priority of the applicant.

(6) An application for appointment of a personal representative to succeed a personal representative who has tendered a resignation as provided in section 91A-3-610(3), or whose appointment has been terminated by death or removal, shall adopt the statements in the application or petition which led to the appointment of the person being succeeded except as specifically changed or corrected, state the name and address of the person who seeks appointment as successor, and describe the priority of the applicant.

**Section 91A-3-302. Informal probate; duty of clerk of court; effect of informal.** Upon receipt of an application requesting informal probate of a will, the clerk, upon making the findings required by section 91A-3-303 shall issue a written statement of informal probate if at least one hundred twenty (120) hours have elapsed since the decedent's death. Informal probate is conclusive as to all persons until superseded by an order in a formal testacy proceeding. No defect in the application or procedure relating thereto which leads to informal probate of a will renders the probate void.

**Section 91A-3-303. Informal probate; proof and findings required.** (1) In an informal proceeding for original probate of a will, the clerk shall determine whether:

(a) the application is complete;

(b) the applicant has made oath or affirmation that the statements contained in the application are true to the best of his knowledge and belief;

(c) the applicant appears from the application to be an interested person as defined in section 91A-1-201(21);

(d) on the basis of the statements in the application, venue is proper;

(e) an original, duly executed and apparently unrevoked will is in the clerk's possession;

(f) any notice required by section 91A-3-204 has been given and that the application is not within section 91A-3-304; and

(g) it appears from the application that the time limit for original probate has not expired.

(2) The application shall be denied if it indicates that a personal representative has been appointed in another county of this state or except as provided in subsection (4) below, if it appears that this or another will of the decedent has been the subject of a previous probate order.

(3) A will which appears to have the required signatures and which contains an attestation clause showing that requirements of execution under section 91A-2-502, 91A-2-503 or 91A-2-506 have been met and that it is self-proved as provided by section 91A-2-504 shall be probated without further proof. In other cases the clerk shall admit the will to probate on the following proof:

(a) on the testimony of one of the subscribing witnesses that the will was executed as required by this code and that the testator was of sound mind at the time of its execution;

(b) if it appears at the time of the filing of the application to have the will informally admitted to probate that none of the subscribing witnesses reside in the county or are capable of appearing and that the sworn or affirmed statement of one of the witnesses to the will has been taken or can be taken within the state within the next ten (10) days, the clerk shall admit the will to probate on the sworn or affirmed written statement of such witness that he has examined the original or a photostatic copy of the will, that he recognizes it as the will of the decedent witnessed by him on the date stated, that the will was executed in all particulars as required by law and that the testator was of sound mind at the time;

(c) if none of the subscribing witnesses reside in the county and are capable of testifying at the time of the application for informal probate and the execution of the will cannot be proved under either of the foregoing subdivisions, the clerk may accept the sworn or affirmed statement or affidavit of any person having knowledge of the circumstances of the execution, and may accept proof of the handwriting of the testator and of the subscribing witnesses or any of them.

(4) Informal probate of a will which has been previously probated elsewhere may be granted at any time upon written application by any interested person, together with deposit of an authenticated copy of the will and of the statement probating it from the office or court where it was first probated.

(5) A will from a place which does not provide for probate of a will after death and which is not eligible for probate under subsection (1) above, may be probated in this state upon receipt by the clerk of a duly authenticated copy of the will and a duly authenticated certificate of its legal custodian that the copy filed is a true copy and that the will has become operative under the law of the other place.

**Section 91A-3-304. Informal probate unavailable in certain cases.** Application for informal probate which relate to one (1) or more of a known series of testamentary instruments (other than wills and codicils), the latest of which does not expressly revoke the earlier, shall be declined.

Section 91A-3-305. **Informal probate; clerk not satisfied.** If the clerk is not satisfied that a will is entitled to be probated in informal proceedings because of failure to meet the requirements of sections 91A-3-303 and 91A-3-304 or any other reason, he may decline the application. A declination of informal probate is not an adjudication and does not preclude formal probate proceedings.

Section 91A-3-306. **Informal probate; notice requirements.** The moving party must give notice as described by section 91A-1-401 of his application for informal probate (1) to any person demanding it pursuant to section 91A-3-204; and

(2) to any personal representative of the decedent whose appointment has not been terminated.

No other notice of informal probate is required.

Section 91A-3-307. **Informal appointment proceedings; delay in order; duty of clerk; effect of appointment.** (1) Upon receipt of an application for informal appointment of a personal representative other than a special administrator as provided in section 91A-3-614, if at least one hundred twenty (120) hours have elapsed since the decedent's death, the clerk, after making the findings required by section 91A-3-308, shall appoint the applicant subject to qualification and acceptance; provided, that if the decedent was a nonresident, the clerk shall delay the order of appointment until thirty (30) days have elapsed since death unless the personal representative appointed at the decedent's domicile is the applicant, or unless the decedent's will directs that his estate be subject to the laws of this state.

(2) The status of personal representative and the powers and duties pertaining to the office are fully established by informal appointment. An appointment, and the office of personal representative created thereby, is subject to termination as provided in sections 91A-3-608 through 91A-3-612, but is not subject to retroactive vacation.

Section 91A-3-308. **Informal appointment proceedings; proof and findings required.** (1) In informal appointment proceedings, the clerk must determine whether:

(a) the application for informal appointment of a personal representative is complete;

(b) the applicant has made oath or affirmation that the statements contained in the application are true to the best of his knowledge and belief;

(c) the applicant appears from the application to be an interested person as defined in section 91A-1-201(21);

(d) on the basis of the statements in the application, venue is proper;

(e) any will to which the requested appointment relates has been formally or informally probated; but this requirement does not apply to the appointment of a special administrator;

(f) any notice required by section 91A-3-204 has been given;

(g) from the statements in the application, the person whose appointment is sought has priority entitling him to the appointment.

(2) Unless section 91A-3-612 controls, the application must be denied if it indicates that a personal representative who has not filed a written statement of resignation as provided in section 91A-3-610(3) has been appointed in this or another county of this state, that (unless the applicant is the domiciliary personal representative or his nominee) the decedent was not domiciled in this state and that a personal representative whose appointment has not been terminated has been appointed by a court in the state of domicile, or that other requirements of this section have not been met.

Section 91A-3-309. **Informal appointment proceedings; clerk not satisfied.** If the clerk is not satisfied that a requested informal appointment of a personal representative should be made because of failure to meet the requirements of sections 91A-3-307 and 91A-3-308, or for any other reason, he may decline the application. A declination of informal appointment is not an adjudication and does not preclude appointment in formal proceedings.

Section 91A-3-310. **Informal appointment proceedings; notice requirements.** The moving party must give notice as described by section 91A-1-401 of his intention to seek an appointment informally: (1) to any person demanding it pursuant to section 91A-3-204; and

(2) to any person having a prior or equal right to appointment not waived in writing and filed with the court. No other notice of an informal appointment proceeding is required.

Section 91A-3-311. **Informal appointment proceedings; unavailable in certain cases.** If an application for informal appointment indicates the existence of a possible unrevoked testamentary instrument which may relate to property subject to the laws of this state, and which is not filed for probate in this court, the clerk shall decline the application.

#### FORMAL TESTACY AND APPOINTMENT PROCEEDINGS

Section 91A-3-401. **Formal testacy proceedings; nature; when commenced.** A formal testacy proceeding is litigation to determine whether a decedent left a valid will. A formal testacy proceeding may be commenced by an interested person filing a petition as described in section 91A-3-402(1) in which he requests that the court, after notice and hearing, enter an order probating a will, or a petition to set aside an informal probate of a will or to prevent informal probate of a will which is the subject of a pending application, or a petition for an order that the decedent died intestate.

A petition may seek formal probate of a will without regard to whether the same or a conflicting will has been informally probated. A formal testacy proceeding may, but need not, involve a request for appointment of a personal representative.

During the pendency of a formal testacy proceeding, the clerk shall not act upon any application for informal probate of any will of the decedent or any application for informal appointment of a personal representative of the decedent.

Unless a petition in a formal testacy proceeding also requests confirmation of the previous informal appointment, a previously appointed personal representative, after receipt of notice of the commencement of a formal probate proceeding, must refrain from exercising his power to make any further distribution of the estate during the pendency of the formal proceeding. A petitioner who seeks the appointment of a different personal representative in a formal proceeding also may request an order restraining the acting personal representative from exercising any of the powers of his office and requesting the appointment of a special administrator. In the absence of a request, or if the request is denied, the commencement of a formal proceeding has no effect on the powers and duties of a previously appointed personal representative other than those relating to distribution.

**Section 91A-3-402. Formal testacy or appointment proceedings; petition; contents.** (1) Petitions for formal probate of a will, or for adjudication of intestacy with or without request for appointment of a personal representative, must be directed to the court, request a judicial order after notice and hearing and contain further statements as indicated in this section. A petition for formal probate of a will

(a) requests an order as to the testacy of the decedent in relation to a particular instrument which may or may not have been informally probated and determining the heirs,

(b) contains the statements required for informal applications as stated in the five (5) subparagraphs under section 91A-3-301(1), the statements required by subparagraphs (b) and (c) of section 91A-3-301(2), and

(c) states whether the original of the last will of the decedent is in the possession of the court or accompanies the petition.

If the original will is neither in the possession of the court nor accompanies the petition and no authenticated copy of a will probated in another jurisdiction accompanies the petition, the petition also must state the contents of the will, and indicate that it is lost, destroyed, or otherwise unavailable.

(2) A petition for adjudication of intestacy and appointment of an administrator in intestacy must request a judicial finding and order that the decedent left no will and determining the heirs, contain the statements required by (1) and (4) of section 91A-3-301 and indicate whether supervised administration is sought. A petition may request an order determining intestacy and heirs without requesting the appointment of an administrator, in which case, the statements required by subparagraph (b) of section 91A-3-301(4) above may be omitted.

**Section 91A-3-403. Formal testacy proceeding; notice of hearing on petition.** (1) Upon commencement of a formal testacy proceeding, the court shall fix a time and place of hearing. Notice shall be given in the manner prescribed by section 91A-1-401 by the petitioner to the persons herein enumerated and to any additional person who has filed a demand for notice under section 91A-3-204 of this code.

Notice shall be given to the following persons: the surviving spouse, children, and other heirs of the decedent, the devisees and executors named in any will that is being, or has been, probated, or offered for informal or formal probate in the county, or that is known by the petitioner to have been probated, or offered for informal or formal probate elsewhere, and any personal representative of the decedent whose appointment has not been terminated. Notice may be given to other persons. In addition, the petitioner shall give notice by publication to all unknown persons and to all known persons whose addresses are unknown who have any interest in the matters being litigated.

(2) If it appears by the petition or otherwise that the fact of the death of the alleged decedent may be in doubt, or on the written demand of any interested person, a copy of the notice of the hearing on said petition shall be sent by registered mail to the alleged decedent at his last known address. The court shall direct the petitioner to report the results of, or make and report back concerning, a reasonably diligent search for the alleged decedent in any manner that may seem advisable, including any or all of the following methods:

(a) by inserting in one (1) or more suitable periodicals a notice requesting information from any person having knowledge of the whereabouts of the alleged decedent;

(b) by notifying law enforcement officials and public welfare agencies in appropriate locations of the disappearance of the alleged decedent;

(c) by engaging the services of an investigator. The costs of any search so directed shall be paid by the petitioner if there is no administration or by the estate of the decedent in case there is administration.

**Section 91A-3-404. Formal testacy proceedings; written objections to probate.** Any party to a formal proceeding who opposes the probate of a will for any reason shall state in his pleadings his objections to probate of the will.

**Section 91A-3-405. Formal testacy proceedings; uncontested cases; hearings and proof.** If a petition in a testacy proceeding is unopposed, the court may order probate or intestacy on the strength of the pleadings if satisfied that the conditions of section 91A-3-409 have been met, or conduct a hearing in open court and require proof of the matters necessary to support the order sought. If evidence concerning execution of the will is necessary, the affidavit or testimony of one (1) of any attesting witnesses to the instrument is sufficient. If the affidavit or testimony of an attesting witness is not available, execution of the will may be proved by other evidence or affidavit.

**Section 91A-3-406. Formal testacy proceedings; contested cases; testimony of attesting witnesses.** (1) If evidence concerning execution of an attested will which is not self-proved is necessary in contested cases, the testimony of at least one (1) of the attesting witnesses, if within the state competent and able to testify, is required. Due execution of an attested or unattested will may be proved by other evidence.

(2) If the will is self-proved, compliance with signature requirements



for execution is conclusively presumed and other requirements of execution are presumed subject to rebuttal without the testimony of any witness upon filing the will and the acknowledgment and affidavits annexed or attached thereto, unless there is proof of fraud or forgery affecting the acknowledgment or affidavit.

**Section 91A-3-407. Formal testacy proceedings; burdens in contested cases.** In contested cases, petitioners who seek to establish intestacy have the burden of establishing prima facie proof of death, venue, and heirship. Proponents of a will have the burden of establishing prima facie proof of due execution in all cases, and, if they are also petitioners, prima facie proof of death and venue. Contestants of a will have the burden of establishing lack of testamentary intent or capacity, undue influence, fraud, duress, mistake or revocation. Parties have the ultimate burden of persuasion as to matters with respect to which they have the initial burden of proof. If a will is opposed by the petition for probate of a later will revoking the former, it shall be determined first whether the later will is entitled to probate, and if a will is opposed by a petition for a declaration of intestacy, it shall be determined first whether the will is entitled to probate.

**Section 91A-3-408. Formal testacy proceedings; will construction; effect of final order in another jurisdiction.** A final order of a court of another state determining testacy, the validity or construction of a will, made in a proceeding involving notice to and an opportunity for contest by all interested persons must be accepted as determinative by the courts of this state if it includes, or is based upon, a finding that the decedent was domiciled at his death in the state where the order was made.

**Section 91A-3-409. Formal testacy proceedings; order; foreign will.** After the time required for any notice has expired, upon proof of notice, and after any hearing that may be necessary, if the court finds that the testator is dead, venue is proper and that the proceeding was commenced within the limitation prescribed by section 91A-3-108, it shall determine the decedent's domicile at death, his heirs and his state of testacy. Any will found to be valid and unrevoked shall be formally probated. Termination of any previous informal appointment of a personal representative, which may be appropriate in view of the relief requested and findings, is governed by section 91A-3-612. The petition shall be dismissed or appropriate amendment allowed if the court is not satisfied that the alleged decedent is dead. A will from a place which does not provide for probate of a will after death, may be proved for probate in this state by a duly authenticated certificate of its legal custodian that the copy introduced is a true copy and that the will has become effective under the law of the other place.

**Section 91A-3-410. Formal testacy proceedings; probate of more than one instrument.** If two (2) or more instruments are offered for probate before a final order is entered in a formal testacy proceeding, more than one (1) instrument may be probated if neither expressly revokes the other or contains provisions which work a total revocation by implication. If more than one (1) instrument is probated, the order shall indicate what provisions control in respect to the nomination of an executor, if any. The order may, but need not, indicate how any provisions of

a particular instrument are affected by the other instrument. After a final order in a testacy proceeding has been entered, no petition for probate of any other instrument of the decedent may be entertained, except incident to a petition to vacate or modify a previous probate order and subject to the time limits of section 91A-3-412.

**Section 91A-3-411. Formal testacy proceedings; partial intestacy.** If it becomes evident in the course of a formal testacy proceeding that, though one (1) or more instruments are entitled to be probated, the decedent's estate is or may be partially intestate, the court shall enter an order to that effect.

**Section 91A-3-412. Formal testacy proceedings; effect of order; vacation.** Subject to appeal and subject to vacation as provided herein and in section 91A-3-413, a formal testacy order under sections 91A-3-409 through 91A-3-411, including an order that the decedent left no valid will and determining heirs, is final as to all persons with respect to all issues concerning the decedent's estate that the court considered or might have considered incident to its rendition relevant to the question of whether the decedent left a valid will, and to the determination of heirs, except that:

(1) the court shall entertain a petition for modification or vacation of its order and probate of another will of the decedent if it is shown that the proponents of the later-offered will were unaware of its existence at the time of the earlier proceeding or were unaware of the earlier proceeding and were given no notice thereof, except by publication.

(2) If intestacy of all or part of the estate has been ordered, the determination of heirs of the decedent may be reconsidered if it is shown that one (1) or more persons were omitted from the determination and it is also shown that the persons were unaware of their relationship to the decedent, were unaware of his death or were given no notice of any proceeding concerning his estate, except by publication.

(3) A petition for vacation under either (1) or (2) above must be filed prior to the earlier of the following time limits:

(a) If a personal representative has been appointed for the estate, the time of entry of any order approving final distribution of the estate, or, if the estate is closed by statement, six (6) months after the filing of the closing statement.

(b) Whether or not a personal representative has been appointed for the estate of the decedent, the time prescribed by section 91A-3-108 when it is no longer possible to initiate an original proceeding to probate a will of the decedent.

(c) Twelve (12) months after the entry of the order sought to be vacated.

(4) The order originally rendered in the testacy proceeding may be modified or vacated, if appropriate under the circumstances, by the order of probate of the later-offered will or the order redetermining heirs.

(5) The finding of the fact of death is conclusive as to the alleged dece-

dent only if notice of the hearing on the petition in the formal testacy proceeding was sent by registered or certified mail addressed to the alleged decedent at his last known address and the court finds that a search under section 91A-3-403(2) was made.

If the alleged decedent is not dead, even if notice was sent and search was made, he may recover estate assets in the hands of the personal representative. In addition to any remedies available to the alleged decedent by reason of any fraud or intentional wrongdoing, the alleged decedent may recover any estate or its proceeds from distributees that is in their hands, or the value of distributions received by them, to the extent that any recovery from distributees is equitable in view of all of the circumstances.

**Section 91A-3-413. Formal testacy proceedings; vacation of order for other cause.** For good cause shown, an order in a formal testacy proceeding may be modified or vacated within the time allowed for appeal.

**Section 91A-3-414. Formal proceedings regarding appointment of personal representative.** (1) A formal proceeding for adjudication regarding the priority or qualification of one who is an applicant for appointment as personal representative, or of one who previously has been appointed personal representative in informal proceedings, if an issue concerning the testacy of the decedent is or may be involved, is governed by section 91A-3-402, as well as by this section. In other cases, the petition shall contain or adopt the statements required by section 91A-3-301(1) and describe the question relating to priority or qualification of the personal representative which is to be resolved. If the proceeding precedes any appointment of a personal representative, it shall stay any pending informal appointment proceedings as well as any commenced thereafter. If the proceeding is commenced after appointment, the previously appointed personal representative, after receipt of notice thereof, shall refrain from exercising any power of administration except as necessary to preserve the estate or unless the court orders otherwise.

(2) After notice to interested persons, including all persons interested in the administration of the estate as successors under the applicable assumption concerning testacy, any previously appointed personal representative and any person having or claiming priority for appointment as personal representative, the court shall determine who is entitled to appointment under section 91A-3-203, make a proper appointment and, if appropriate, terminate any prior appointment found to have been improper as provided in cases of removal under section 91A-3-611.

### SUPERVISED ADMINISTRATION

**Section 91A-3-501. Supervised administration; nature of proceeding.** Supervised administration is a single in rem proceeding to secure complete administration and settlement of a decedent's estate under the continuing authority of the court which extends until entry of an order approving distribution of the estate and discharging the personal representative or other order terminating the proceeding. A supervised personal representative is responsible to the court, as well as to the interested parties, and is subject to directions concerning the estate made by the court

on its own motion or on the motion of any interested party. Except as otherwise provided in sections 91A-3-501 through 91A-3-505, or as otherwise ordered by the court, a supervised personal representative has the same duties and powers as a personal representative who is not supervised.

**Section 91A-3-502. Supervised administration; petition; order.** A petition for supervised administration may be filed by any interested person or by a personal representative at any time or the prayer for supervised administration may be joined with a petition in a testacy or appointment proceeding. If the testacy of the decedent and the priority and qualification of any personal representative have not been adjudicated previously, the petition for supervised administration shall include the matters required of a petition in a formal testacy proceeding and the notice requirements and procedures applicable to a formal testacy proceeding apply. If not previously adjudicated, the court shall adjudicate the testacy of the decedent and questions relating to the priority and qualifications of the personal representative in any case involving a request for supervised administration, even though the request for supervised administration may be denied. After notice to interested persons, the court shall order supervised administration of a decedent's estate:

(1) if the decedent's will directs supervised administration, it shall be ordered unless the court finds that circumstances bearing on the need for supervised administration have changed since the execution of the will and that there is no necessity for supervised administration;

(2) if the decedent's will directs unsupervised administration, supervised administration shall be ordered only upon a finding that it is necessary for protection of persons interested in the estate; or

(3) in other cases if the court finds that supervised administration is necessary under the circumstances.

**Section 91A-3-503. Supervised administration; effect on other proceedings.** (1) The pendency of a proceeding for supervised administration of a decedent's estate stays action on any informal application then pending or thereafter filed.

(2) If a will has been previously probated in informal proceedings, the effect of the filing of a petition for supervised administration is as provided for formal testacy proceedings by section 91A-3-401.

(3) After he has received notice of the filing of a petition for supervised administration, a personal representative who has been appointed previously shall not exercise his power to distribute any estate. The filing of the petition does not affect his other powers and duties unless the court restricts the exercise of any of them pending full hearing on the petition.

**Section 91A-3-504. Supervised administration; powers of personal administration.** Unless restricted by the court, a supervised personal representative has, without interim orders approving exercise of a power, all powers of personal representatives under this code, but he shall not exercise his power to make any distribution of the estate without prior order of the court. Any other restriction on the power of a personal repre-

sentative which may be ordered by the court must be endorsed on his letters of appointment and, unless so endorsed, is ineffective as to persons dealing in good faith with the personal representative.

**Section 91A-3-505. Supervised administration; interim orders; distribution and closing orders.** Unless otherwise ordered by the court, supervised administration is terminated by order in accordance with time restrictions, notices and contents of orders prescribed for proceedings under section 91A-3-1001. Interim orders approving or directing partial distributions or granting other relief may be issued by the court at any time during the pendency of a supervised administration on the application of the personal representative or any interested person.

#### PERSONAL REPRESENTATIVE; APPOINTMENT, CONTROL AND TERMINATION OF AUTHORITY

**Section 91A-3-601. Qualification of personal representative.** Prior to receiving letters, a personal representative shall qualify by filing with the appointing court any required bond and a statement of acceptance of the duties of the office.

**Section 91A-3-602. Acceptance of appointment; consent to jurisdiction.** By accepting appointment, a personal representative submits personally to the jurisdiction of the court in any proceeding relating to the estate that may be instituted by any interested person. Notice of any proceeding shall be delivered to the personal representative, or mailed to him by ordinary first class mail at his address as listed in the application or petition for appointment or as thereafter reported to the court and to his address as then known to the petitioner.

**Section 91A-3-603. Bond not required without court order; exceptions.** No bond is required of a personal representative appointed in informal proceedings, except (1) upon the appointment of a special administrator;

(2) when an executor or other personal representative is appointed to administer an estate under a will containing an express requirement of bond or

(3) when bond is required under section 91A-3-605.

Bond may be required by court order at the time of appointment of a personal representative appointed in any formal proceeding except that bond is not required of a personal representative appointed in formal proceedings if the will relieves the personal representative of bond, unless bond has been requested by an interested party and the court is satisfied that it is desirable. Bond required by any will may be dispensed with in formal proceedings upon determination by the court that it is not necessary. No bond is required of any personal representative who, pursuant to statute, has deposited cash or collateral with an agency of this state to secure performance of his duties.

**Section 91A-3-604. Bond amount; security; procedure; reduction.** If bond is required and the provisions of the will or order do not specify the amount, unless stated in his application or petition, the person qualifying shall file a statement under oath with the clerk indicating his best

estimate of the value of the personal estate of the decedent and of the income expected from the personal and real estate during the next year, and he shall execute and file a bond with the clerk, or give other suitable security, in an amount not less than the estimate. The clerk shall determine that the bond is duly executed by a corporate surety, or one or more individual sureties whose performance is secured by pledge of personal property, mortgage on real property or other adequate security. The clerk may permit the amount of the bond to be reduced by the value of assets of the estate deposited with a domestic financial institution (as defined in section 91A-6-101) in a manner that prevents their unauthorized disposition. On petition of the personal representative or another interested person the court may excuse a requirement of bond, increase or reduce the amount of the bond, release sureties, or permit the substitution of another bond with the same or different sureties.

**Section 91A-3-605. Demand for bond by interested person.** Any person apparently having an interest in the estate worth in excess of one thousand dollars (\$1,000), or any creditor having a claim in excess of one thousand dollars (\$1,000), may make a written demand that a personal representative give bond. The demand must be filed with the clerk and a copy mailed to the personal representative, if appointment and qualification have occurred. Thereupon, bond is required, but the requirement ceases if the person demanding bond ceases to be interested in the estate, or if bond is excused as provided in section 91A-3-603 or 91A-3-604. After he has received notice and until the filing of the bond or cessation of the requirement of bond, the personal representative shall refrain from exercising any powers of his office except as necessary to preserve the estate. Failure of the personal representative to meet a requirement of bond by giving suitable bond within thirty (30) days after receipt of notice is cause for his removal and appointment of a successor personal representative.

**Section 91A-3-606. Terms and conditions of bond.** (1) The following requirements and provisions apply to any bond required by this part:

(a) Bonds shall name the state as obligee for the benefit of the persons interested in the estate and shall be conditioned upon the faithful discharge by the fiduciary of all duties according to law.

(b) Unless otherwise provided by the terms of the approved bond, sureties are jointly and severally liable with the personal representative and with each other. The address of sureties shall be stated in the bond.

(c) By executing an approved bond of a personal representative, the surety consents to the jurisdiction of the probate court which issued letters to the primary obligor in any proceedings pertaining to the fiduciary duties of the personal representative and naming the surety as a party. Notice of any proceeding shall be delivered to the surety or mailed to him by registered or certified mail at his address as listed with the court where the bond is filed and to his address as then known to the petitioner.

(d) On petition of a successor personal representative, any other personal representative of the same decedent, or any interested person, a proceeding in the court may be initiated against a surety for breach of the obligation of the bond of the personal representative.

(e) The bond of the personal representative is not void after the first recovery but may be proceeded against from time to time until the whole penalty is exhausted.

(2) No action or proceeding may be commenced against the surety on any matter as to which an action or proceeding against the primary obligor is barred by adjudication or limitation.

**Section 91A-3-607. Order restraining personal representative.** (1) On petition of any person who appears to have an interest in the estate, the court by temporary order may restrain a personal representative from performing specified acts of administration, disbursement, or distribution, or exercise of any powers or discharge of any duties of his office, or make any other order to secure proper performance of his duty, if it appears to the court that the personal representative otherwise may take some action which would jeopardize unreasonably the interest of the applicant or of some other interested person. Persons with whom the personal representative may transact business may be made parties.

(2) The matter shall be set for hearing within ten (10) days unless the parties otherwise agree. Notice as the court directs shall be given to the personal representative and his attorney of record, if any, and to any other parties named defendant in the petition.

**Section 91A-3-608. Termination of appointment; general.** Termination of appointment of a personal representative occurs as indicated in sections 91A-3-609 to 91A-3-612, inclusive. Termination ends the right and power pertaining to the office of personal representative as conferred by this code or any will, except that a personal representative, at any time prior to distribution or until restrained or enjoined by court order, may perform acts necessary to protect the estate and may deliver the assets to a successor representative. Termination does not discharge a personal representative from liability for transactions or omissions occurring before termination, or relieve him of the duty to preserve assets subject to his control, to account therefor and to deliver the assets. Termination does not affect the jurisdiction of the court over the personal representative, but terminates his authority to represent the estate in any pending or future proceeding.

**Section 91A-3-609. Termination of appointment; death or disability.** The death of a personal representative or the appointment of a conservator for the estate of a personal representative, terminates his appointment. Until appointment and qualification of a successor or special representative to replace the deceased or protected representative, the representative of the estate of the deceased or protected personal representative, if any, has the duty to protect the estate possessed and being administered by his decedent or ward at the time his appointment terminates, has the power to perform acts necessary for protection and shall account for and deliver the estate assets to a successor or special personal representative upon his appointment and qualification.

**Section 91A-3-610. Termination of appointment; voluntary.** (1) An appointment of a personal representative terminates as provided in section 91A-3-1003, one (1) year after the filing of a closing statement.

(2) An order closing an estate as provided in section 91A-3-1001 or 91A-3-1002 terminates an appointment of a personal representative.

(3) A personal representative may resign his position by filing a written statement of resignation with the clerk after he has given at least fifteen (15) days written notice to the persons known to be interested in the estate. If no one applies or petitions for appointment of a successor representative within the time indicated in the notice, the filed statement of resignation is ineffective as a termination of appointment and in any event is effective only upon the appointment and qualification of a successor representative and delivery of the assets to him.

**Section 91A-3-611. Termination of appointment by removal; cause; procedure.** (1) A person interested in the estate may petition for removal of a personal representative for cause at any time. Upon filing of the petition, the court shall fix a time and place for hearing. Notice shall be given by the petitioner to the personal representative, and to other persons as the court may order. Except as otherwise ordered as provided in section 91A-3-607, after receipt of notice of removal proceedings, the personal representative shall not act except to account, to correct maladministration or preserve the estate. If removal is ordered, the court also shall direct by order the disposition of the assets remaining in the name of, or under the control of, the personal representative being removed.

(2) Cause for removal exists when removal would be in the best interests of the estate, or if it is shown that a personal representative or the person seeking his appointment intentionally misrepresented material facts in the proceedings leading to his appointment, or that the personal representative has disregarded an order of the court, has become incapable of discharging the duties of his office, or has mismanaged the estate or failed to perform any duty pertaining to the office. Unless the decedent's will directs otherwise, a personal representative appointed at the decedent's domicile, incident to securing appointment of himself or his nominee as ancillary personal representative, may obtain removal of another who was appointed personal representative in this state to administer local assets.

**Section 91A-3-612. Termination of appointment; change of testacy status.** Except as otherwise ordered in formal proceedings, the probate of a will subsequent to the appointment of a personal representative in intestacy or under a will which is superseded by formal probate of another will, or the vacation of an informal probate of a will subsequent to the appointment of the personal representative thereunder, does not terminate the appointment of the personal representative although his powers may be reduced as provided in section 91A-3-401. Termination occurs upon appointment in informal or formal appointment proceedings of a person entitled to appointment under the later assumption concerning testacy. If no request for new appointment is made within thirty (30) days after expiration of time for appeal from the order in formal testacy proceedings, or from the informal probate, changing the assumption concerning testacy, the previously appointed personal representative upon request may be appointed personal representative under the subsequently probated will, or as in intestacy as the case may be.



Section 91A-3-613. **Successor personal representative.** Sections 91A-3-301 through 91A-3-414 govern proceedings for appointment of a personal representative to succeed one whose appointment has been terminated. After appointment and qualification, a successor personal representative may be substituted in all actions and proceedings to which the former personal representative was a party, and no notice, process or claim which was given or served upon the former personal representative need be given to or served upon the successor in order to preserve any position or right the person giving the notice or filing the claim may thereby have obtained or preserved with reference to the former personal representative. Except as otherwise ordered by the court, the successor personal representative has the powers and duties in respect to the continued administration which the former personal representative would have had if his appointment had not been terminated.

Section 91A-3-614. **Special administrator; appointment.** A special administrator may be appointed:

(1) informally by the clerk on the application of any interested person when necessary to protect the estate of a decedent prior to the appointment of a general personal representative or if a prior appointment has been terminated as provided in section 91A-3-609;

(2) in a formal proceeding by order of the court on the petition of any interested person and finding, after notice and hearing, that appointment is necessary to preserve the estate or to secure its proper administration including its administration in circumstances where a general personal representative cannot or should not act. If it appears to the court that an emergency exists, appointment may be ordered without notice.

Section 91A-3-615. **Special administrator; who may be appointed.**

(1) If a special administrator is to be appointed pending the probate of a will which is the subject of a pending application or petition for probate, the person named executor in the will shall be appointed if available, and qualified.

(2) In other cases, any proper person may be appointed special administrator.

Section 91A-3-616. **Special administrator; appointed informally; powers and duties.** A special administrator appointed by the clerk in informal proceedings pursuant to section 91A-3-614(1) has the duty to collect and manage the assets of the estate, to preserve them, to account therefor and to deliver them to the general personal representative upon his qualification. The special administrator has the power of a personal representative under the code necessary to perform his duties.

Section 91A-3-617. **Special administrator; formal proceedings; power and duties.** A special administrator appointed by order of the court in any formal proceeding has the power of a general personal representative except as limited in the appointment and duties as prescribed in the order. The appointment may be for a specified time, to perform particular acts or on other terms as the court may direct.

Section 91A-3-618. **Termination of appointment; special adminis-**

**trator.** The appointment of a special administrator terminates in accordance with the provisions of the order of appointment or on the appointment of a general personal representative. In other cases, the appointment of a special administrator is subject to termination as provided in sections 91A-3-608 through 91A-3-611.

#### DUTIES AND POWERS OF PERSONAL REPRESENTATIVES

Section 91A-3-701. **Time of accrual of duties and powers.** The duties and powers of a personal representative commence upon his appointment. The powers of a personal representative relate back in time to give acts by the person appointed which are beneficial to the estate occurring prior to appointment the same effect as those occurring thereafter. Prior to appointment, a person named executor in a will may carry out written instructions of the decedent relating to his body, funeral and burial arrangements. A personal representative may ratify and accept acts on behalf of the estate done by others where the acts would have been proper for a personal representative.

Section 91A-3-702. **Priority among different letters.** A person to whom general letters are issued first has exclusive authority under the letters until his appointment is terminated or modified. If, through error, general letters are afterwards issued to another, the first appointed representative may recover any property of the estate in the hands of the representative subsequently appointed, but the acts of the latter done in good faith before notice of the first letters are not void for want of validity of appointment.

Section 91A-3-703. **General duties; relation and liability to persons interested in estate; standing to sue.** (1) A personal representative is a fiduciary who shall observe the standards of care applicable to trustees under the laws of the state of Montana. A personal representative is under a duty to settle and distribute the estate of the decedent in accordance with the terms of any probated and effective will and this code, and as expeditiously and efficiently as is consistent with the best interests of the estate. He shall use the authority conferred upon him by this code, the terms of the will, if any, and any order in proceedings to which he is party for the best interests of successors to the estate.

(2) A personal representative shall not be surcharged for acts of administration or distribution if the conduct in question was authorized at the time. Subject to other obligations of administration and of this code, an informally probated will is authority to administer and distribute the estate according to its terms. Subject to the provisions of this code, an order of appointment of a personal representative, whether issued in informal or formal proceedings, is authority to distribute apparently intestate assets to the heirs of the decedent if, at the time of distribution, the personal representative is not aware of a pending testacy proceeding, a proceeding to vacate an order entered in an earlier testacy proceeding, a formal proceeding questioning his appointment or fitness to continue, or a supervised administration proceeding. Nothing in this section affects the duty of the personal representative to administer and distribute the estate in accordance with the rights of claimants, the surviving spouse,

any minor and dependent children and any pretermitted child of the decedent as described elsewhere in this code.

(3) Except as to proceedings which do not survive the death of the decedent, a personal representative of a decedent domiciled in this state at his death has the same standing to sue and be sued in the courts of this state and the courts of any other jurisdiction as his decedent had immediately prior to death.

**Section 91A-3-704. Personal representative to proceed without court order; exception.** A personal representative shall proceed expeditiously with the settlement and distribution of a decedent's estate and, except as otherwise specified under this code or ordered in regard to a supervised personal representative, do so without adjudication, order, or direction of the court, but he may invoke the jurisdiction of the court, in proceedings authorized by this code, to resolve questions concerning the estate or its administration.

**Section 91A-3-705. Duty of personal representative; information to heirs and devisees.** Not later than thirty (30) days after his appointment every personal representative, except any special administrator, shall give information of his appointment to the heirs and devisees, including, if there has been no formal testacy proceeding and if the personal representative was appointed on the assumption that the decedent died intestate, the devisees in any will mentioned in the application for appointment of a personal representative. The information shall be delivered or sent by ordinary mail to each of the heirs and devisees whose address is reasonably available to the personal representative. The duty does not extend to require information to persons who have been adjudicated in a prior formal testacy proceeding to have no interest in the estate. The information shall include the name and address of the personal representative, indicate that it is being sent to persons who have or may have some interest in the estate being administered, indicate whether bond has been filed, and describe the court where papers relating to the estate are on file. The personal representative's failure to give this information is a breach of his duty to the persons concerned but does not affect the validity of his appointment, his powers or other duties. A personal representative may inform other persons of his appointment by delivery or ordinary first class mail.

**Section 91A-3-706. Duty of personal representative; supplementary inventory and appraisal; employment of appraiser; copy to department of revenue.** Within three (3) months after his appointment, a personal representative, who is not a special administrator or a successor to another representative who has previously discharged this duty, shall prepare and file or mail an inventory, which inventory shall include listing of all property which the decedent owned, had an interest in or control over, individually, in common, or jointly, or otherwise had at the time of his death; or had possessory or dispositive rights over at the time of his death or had disposed of for less than its fair market value within three (3) years of his death; or which was affected by his death for the purpose of inheritance or estate taxes. The inventory shall include a statement of the full and true value of the decedent's interest in every item listed in such inventory. In this connection the personal representa-

tive shall appoint at least three (3) qualified and disinterested persons, any two (2) of whom may act, to assist him in ascertaining the fair market value as of the date of the decedent's death of all assets included in the estate. Different persons may be employed to appraise different kinds of assets included in the estate. The names and addresses of any appraiser shall be indicated on the inventory with the item or items he appraised.

The personal representative shall send a copy of the inventory to interested persons who request it, and he shall file the original of the inventory with the court. In any event, a copy of the inventory and statement of value shall be mailed to the department of revenue.

**Section 91A-3-707. Duty of personal representative; supplementary inventory; copy to department of revenue.** If any property not included in the original inventory comes to the knowledge of a personal representative or if the personal representative learns that the value or description indicated in the original inventory for any item is erroneous or misleading, he shall make a supplementary inventory or appraisal showing the market value as of the date of the decedent's death of the new item or the revised market value or descriptions, and the appraisers or other data relied upon, if any, and file it with the court if the original inventory was filed, or furnish copies thereof or information thereof to persons interested in the new information; and in any case shall mail a copy of it to the department of revenue.

**Section 91A-3-708. Duty of personal representative; possession of estate.** Except as otherwise provided by a decedent's will and subject to the provisions of section 91-3205, R.C.M. 1947, every personal representative has a right to, and shall take possession or control of, the decedent's property, except that any real property or tangible personal property may be left with or surrendered to the person presumptively entitled thereto unless or until, in the judgment of the personal representative, possession of the property by him will be necessary for purposes of administration. The request by a personal representative for delivery of any property possessed by an heir or devisee is conclusive evidence, in any action against the heir or devisee for possession thereof, that the possession of the property by the personal representative is necessary for purposes of administration. The personal representative shall pay taxes on, and take all steps reasonably necessary for the management, protection and preservation of, the estate in his possession. He may maintain an action to recover possession of property or to determine the title thereto.

**Section 91A-3-709. Power to avoid transfers.** The property liable for the payment of unsecured debts of a decedent includes all property transferred by him by any means which is in law void or voidable as against his creditors, and subject to prior liens, the right to recover this property, so far as necessary for the payment of unsecured debts of the decedent, is exclusively in the personal representative.

**Section 91A-3-710. Improper exercise of power; breach of fiduciary duty.** If any exercise of power concerning the estate is improper, the personal representative is liable to interested persons for damage or loss resulting from breach of his fiduciary duty to the same extent as a trustee of an express trust. The rights of purchasers and others dealing

with a personal representative shall be determined as provided in sections 91A-3-711 and 91A-3-712.

**Section 91A-3-711. Sale, encumbrance or transaction involving conflict of interest; voidable; exceptions.** Any sale or encumbrance to the personal representative, his spouse, agent or attorney, or any corporation or trust in which he has a substantial beneficial interest, or any transaction which is affected by a substantial conflict of interest on the part of the personal representative, is voidable by any person interested in the estate except one who has consented after fair disclosure, unless

(1) the will or a contract entered into by the decedent expressly authorized the transaction; or

(2) the transaction is approved by the court after notice to interested persons.

**Section 91A-3-712. Persons dealing with personal representatives; protection.** A person who in good faith and without notice either assists a personal representative or deals with him for value is protected as if the personal representative properly exercised his power. The fact that a person knowingly deals with a personal representative does not alone require the person to inquire into the existence of a power or the propriety of its exercise. Except for restrictions on powers of supervised personal representatives which are endorsed on letters as provided in section 91A-3-504, no provision in any will or order of court purporting to limit the power of a personal representative is effective except as to persons with actual knowledge thereof. A person is not bound to see to the proper application of estate assets paid or delivered to a personal representative. The protection here expressed extends to instances in which some procedural irregularity or jurisdictional defect occurred in proceedings leading to the issuance of letters, including a case in which the alleged decedent is found to be alive. The protection here expressed is not by substitution for that provided by comparable provisions of the laws relating to commercial transactions and laws simplifying transfers of securities by fiduciaries nor does it in any way limit the provisions of section 91A-3-1010.

**Section 91A-3-713. Transactions authorized for personal representatives; exceptions.** Except as restricted by this code or otherwise provided by the will or by an order in a formal proceeding and subject to the priorities stated in section 91A-3-902, a personal representative, acting reasonably for the benefit of the interested persons, may properly:

(1) retain assets owned by the decedent pending distribution or liquidation including those in which the representative is personally interested or which are otherwise improper for trust investment;

(2) receive assets from fiduciaries, or other sources;

(3) perform, compromise or refuse performance of the decedent's contracts that continue as obligations of the estate, as he may determine under the circumstances. In performing enforceable contracts by the decedent to convey or lease land, the personal representative, among other possible courses of action, may:

(a) execute and deliver a deed of conveyance for cash payment of all sums remaining due or the purchaser's note for the sum remaining due secured by a mortgage or deed of trust on the land; or

(b) deliver a deed in escrow with directions that the proceeds, when paid in accordance with the escrow agreement, be paid to the successors of the decedent, as designated in the escrow agreement;

(4) satisfy written charitable pledges of the decedent irrespective of whether the pledges constituted binding obligations of the decedent or were properly presented as claims, if in the judgment of the personal representative the decedent would have wanted the pledges completed under the circumstances;

(5) if funds are not needed to meet debts and expenses currently payable and are not immediately distributable, deposit or invest liquid assets of the estate, including moneys received from the sale of other assets, in federally insured interest-bearing accounts, readily marketable secured loan arrangements or other prudent investments which would be reasonable for use by trustees generally;

(6) acquire or dispose of an asset, including land in this or another state, for cash or on credit, at public or private sale; and manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset;

(7) make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any improvements, raze existing or erect new party walls or buildings;

(8) subdivide, develop or dedicate land to public use; make or obtain the vacation of plats and adjust boundaries; or adjust differences in valuation on exchange or partition by giving or receiving considerations; or dedicate easements to public use without consideration;

(9) enter for any purpose into a lease as lessor or lessee, with or without option to purchase or renew, for a term within or extending beyond the period of administration;

(10) enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;

(11) with the consent of the heirs or devisees or the court abandon property when, in the opinion of the personal representative, it is valueless, or is so encumbered, or is in condition that it is of no benefit to the estate;

(12) vote stocks or other securities in person or by general or limited proxy;

(13) pay calls, assessments, and other sums chargeable or accruing against or on account of securities, unless barred by the provisions relating to claims;

(14) hold a security in the name of a nominee or in other form without disclosure of the interest of the estate but the personal representative is liable for any act of the nominee in connection with the security so held;

(15) insure the assets of the estate against damage, loss and liability and himself against liability as to third persons;

(16) borrow money with or without security to be repaid from the estate assets or otherwise; and advance money for the protection of the estate;

(17) with the consent of the heirs or devisees or the court effect a fair and reasonable compromise with any debtor or obligor, or extend, renew or in any manner modify the terms of any obligation owing to the estate. If the personal representative holds a mortgage, pledge or other lien upon property of another person, he may, in lieu of foreclosure, accept a conveyance or transfer of encumbered assets from the owner thereof in satisfaction of the indebtedness secured by lien;

(18) pay taxes, assessments, compensation of the personal representative, and other expenses incident to the administration of the estate;

(19) sell or exercise stock subscription or conversion rights; consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;

(20) allocate items of income or expense to either estate income or principal, as permitted or provided by law;

(21) employ persons, including attorneys, auditors, investment advisors, or agents, even if they are associated with the personal representative, to advise or assist the personal representative in the performance of his administrative duties; act without independent investigation upon their recommendations; and instead of acting personally, employ one (1) or more agents to perform any act of administration, whether or not discretionary;

(22) prosecute or defend claims, or proceedings in any jurisdiction for the protection of the estate and of the personal representative in the performance of his duties;

(23) sell, mortgage, or lease any real or personal property of the estate or any interest therein for cash, credit, or for part cash and part credit, and with or without security for unpaid balances provided, however, no personal representative shall without prior court approval in a supervised proceeding, either directly or indirectly purchase any property of the estate he represents, nor shall he be interested in any such sale. All sales shall be fairly conducted and made for the best price obtainable.

(24) continue any unincorporated business or venture in which the decedent was engaged at the time of his death:

(a) in the same business form for a period of not more than four (4) months from the date of appointment of a general personal representative if continuation is a reasonable means of preserving the value of the business including good will;

(b) in the same business form for any additional period of time that may be approved by order of the court in a formal proceeding to which the persons interested in the estate are parties; or

(c) throughout the period of administration if the business is incorpo-

rated by the personal representative and if none of the probable distributees of the business who are competent adults object to its incorporation and retention in the estate;

(25) incorporate any business or venture in which the decedent was engaged at the time of his death;

(26) satisfy and settle claims and distribute the estate as provided in this code.

**Section 91A-3-714. Final accounting; disposition of copies; further accountings; vouchers; challenges.** Before any estate may be finally closed and the personal representative relieved from his duties and obligations thereunder he shall either file with the court or deliver to all interested persons an accounting under oath showing the amount of money received and expended by him, the amount of all claims presented against the estate and the names of the claimants and all other matters necessary to show the state of its affairs. A copy of such account shall also be mailed to the department of revenue. Any interested person at any time during the course of administration of an estate may for good cause shown require further accountings. In rendering any account the personal representative must produce and file vouchers for all charges, debts, claims and expenses which he has paid, which shall be filed with the clerk of court, provided that no voucher shall be required if the item of expenditure does not exceed fifty dollars (\$50). Upon the mailing or filing of any such account, any interested person may challenge the same in writing, and if the proceeding is at the time of such challenge informal, the challenge of such account shall be deemed a supervised matter.

**Section 91A-3-715. Sale of estate property after delivery of inventory to department of revenue and payment or waiver of taxes; exception.** Save upon an order of court obtained after notice and hearing in a supervised proceeding or formal probate, no property of the estate shall be sold unless and until a proper inventory and statement of value has been delivered to the state department of revenue and the tax due the state of Montana has been paid or the department of revenue has waived that tax in connection with the sale of the property.

**Section 91A-3-716. Powers and duties of successor personal representative.** A successor personal representative has the same power and duty as the original personal representative to complete the administration and distribution of the estate, as expeditiously as possible, but he shall not exercise any power expressly made personal to the executor named in the will.

**Section 91A-3-717. Corepresentatives; when joint action required.** If two (2) or more persons are appointed corepresentatives and unless the will provides otherwise, the concurrence of all is required on all acts connected with the administration and distribution of the estate. This restriction does not apply when any corepresentative receives and receipts for property due the estate, when the concurrence of all cannot readily be obtained in the time reasonably available for emergency action necessary to preserve the estate, or when a corepresentative has been delegated to act for the others. Persons dealing with a corepresentative



if actually unaware that another has been appointed to serve with him or if advised by the personal representative with whom they deal that he has authority to act alone for any of the reasons mentioned herein, are as fully protected as if the person with whom they dealt had been the sole personal representative.

**Section 91A-3-718. Powers of surviving personal representative.** Unless the terms of the will otherwise provide, every power exercisable by personal corepresentatives may be exercised by the one (1) or more remaining after the appointment of one (1) or more is terminated, and if one (1) of two (2) or more nominated as coexecutors is not appointed, those appointed may exercise all the powers incident to the office.

**Section 91A-3-719. Compensation of personal representative.** (1) A personal representative is entitled to reasonable compensation for his services. Such compensation shall not exceed three percent (3%) of the first forty thousand dollars (\$40,000) of the value of the estate as reported for federal estate tax or state inheritance tax purposes, whichever is larger and two percent (2%) of the value of the estate in excess of forty thousand dollars (\$40,000) as reported for federal estate tax or state inheritance tax purposes, whichever is larger.

(2) In proceedings conducted for the termination of joint tenancies, the compensation of the personal representative shall not exceed two percent (2%) of the interest passing.

(3) In proceedings conducted for the termination of a life estate, the compensation allowed the personal representative shall not exceed two percent (2%) of the value of the life estate if it is terminated in connection with a probate or joint tenancy termination. If a life estate is terminated separately, the personal representative's compensation shall not exceed two percent (2%) of the value of the estate, except that it shall not be less than one hundred dollars (\$100).

(4) If there is more than one personal representative, only one compensation is allowed.

(5) The court may allow additional compensation for extraordinary services. Such additional compensation shall not be greater than the amount which is allowed for the original compensation.

(6) If the will provides for the compensation of the personal representative and there is no contract with the decedent regarding compensation, the personal representative may renounce the provision before qualifying and be entitled to compensation under the terms of this section. A personal representative also may renounce his right to all or any part of the compensation. A written renunciation of fee may be filed with the court.

**Section 91A-3-720. Compensation of attorney.** (1) If the services of an attorney are engaged by the personal representative, the compensation of such attorney shall not exceed one and one half (1 ½) times the compensation allowable to the personal representative.

(2) If the services of an attorney are engaged by the personal representative to assist in the termination of joint tenancies, the compensation

allowed the attorney shall not exceed three percent (3%) of the interest passing.

(3) If the services of an attorney are engaged in connection with the termination of a life estate, the compensation allowed the attorney shall not exceed three percent (3%) of the value of the life estate if it is terminated in connection with a probate or joint tenancy termination. If a life estate is terminated separately, the attorney's compensation shall not exceed three percent (3%) except that it shall not be less than one hundred dollars (\$100).

(4) If the services of more than one attorney are engaged, only one compensation shall be allowed.

(5) In cases where further compensation may be allowed to an attorney, the same must be fixed and determined by the court upon good cause shown after notice and hearing of an application therefor.

Section 91A-3-721. **Expenses in estate litigation.** If any personal representative or person nominated as personal representative defends or prosecutes any proceeding in good faith, whether successful or not he is entitled to receive from the estate his necessary expenses and disbursements including reasonable attorneys' fees incurred.

Section 91A-3-722. **Proceedings for review of employment of agents and compensation of personal representatives and employees of estate; court to set disputed fee.** Upon the filing of a motion for settlement of fees by the court filed by an interested person, the personal representative or the person employed by the personal representative and after notice to all interested persons, the propriety of employment of any person by a personal representative including any attorney, auditor, investment advisor or other specialized agent or assistant, the reasonableness of the compensation of any person so employed, or the reasonableness of the compensation determined by the personal representative for his own services, shall be reviewed and determined by the court. In any dispute concerning fees, the court shall set the fee. Any person who has received excessive compensation from an estate for services rendered may be ordered to make appropriate refunds.

#### CREDITORS' CLAIMS

Section 91A-3-801. **Notice to creditors.** Unless notice has already been given under this section, a personal representative upon his appointment shall publish a notice once a week for three (3) successive weeks in a newspaper of general circulation in the county announcing his appointment and address and notifying creditors of the estate to present their claims within four (4) months after the date of the first publication of the notice or be forever barred, and proof of publication shall be filed with the clerk.

Section 91A-3-802. **Statutes of limitations.** Unless an estate is insolvent the personal representative, with the consent of all successors, may waive any defense of limitations available to the estate. If the defense is not waived, no claim which was barred by any statute of limitations at the time of the decedent's death shall be allowed or paid. The running

of any statute of limitations measured from some other event than death and advertisement for claims against a decedent is suspended during the four (4) months following the decedent's death but resumes thereafter as to claims not barred pursuant to the sections which follow. For purposes of any statute of limitations, the proper presentation of a claim under section 91A-3-804 is equivalent to commencement of a proceeding on the claim.

**Section 91A-3-803. Limitations of presentation of claims; exception.** (1) All claims against a decedent's estate with the exception of claims founded on tort which arose before the death of the decedent, including claims of the state and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract or other legal basis, if not barred earlier by other statute of limitations, are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented as follows:

(a) within four (4) months after the date of the first publication of notice to creditors if notice is given in compliance with section 91A-3-801; provided, claims barred by the nonclaim statute at the decedent's domicile before the first publication for claims in this state are also barred in this state; or

(b) within three (3) years after the decedent's death, if notice to creditors has not been published.

(2) All claims against a decedent's estate with the exception of claims founded on tort which arise at or after the death of the decedent, including claims of the state and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract or other legal basis, are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented as follows:

(a) a claim based on a contract with the personal representative, within four (4) months after performance by the personal representative is due;

(b) any other claim, within four (4) months after it arises.

(3) Nothing in this section affects or prevents:

(a) any proceeding to enforce any mortgage, pledge, or other lien upon property of the estate; or

(b) to the limits of the insurance protection only, any proceeding to establish liability of the decedent or the personal representative for which he is protected by liability insurance.

**Section 91A-3-804. Manner of presentation of claims.** Claims against a decedent's estate may be presented as follows:

(1) The claimant shall mail to the personal representative return receipt requested a written statement of the claim indicating its basis, the name and address of the claimant, and the amount claimed, or may file a written statement of the claim, in the form prescribed by rule, with

the clerk of the court. The claim is deemed presented on the first to occur of receipt of the written statement of claim by the personal representative, or the filing of the claim with the court. If a claim is not yet due, the date when it will become due shall be stated. If the claim is contingent or unliquidated, the nature of the uncertainty shall be stated. If the claim is secured, the security shall be described. Failure to describe correctly the security, the nature of any uncertainty, and the due date of a claim not yet due does not invalidate the presentation made.

(2) The claimant may commence a proceeding against the personal representative in any court where the personal representative may be subjected to jurisdiction, to obtain payment of his claim against the estate, but the commencement of the proceeding must occur within the time limited for presenting the claim. No presentation of claim is required in regard to matters claimed in proceedings against the decedent which were pending at the time of his death.

(3) If a claim is presented under subsection (1), no proceeding thereon may be commenced more than sixty (60) days after the personal representative has mailed a notice of disallowance; but, in the case of a claim which is not presently due or which is contingent or unliquidated, the personal representative may consent to an extension of the sixty (60) day period, or to avoid injustice the court, on petition, may order an extension of the sixty (60) day period, but in no event shall the extension run beyond the applicable statute of limitations.

**Section 91A-3-805. Classification of claims.** (1) If the applicable assets of the estate are insufficient to pay all claims in full, the personal representative shall make payment in the following order:

- (a) costs and expenses of administration;
- (b) reasonable funeral expenses;
- (c) debts and taxes with preference under federal law;
- (d) reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation of persons attending him;
- (e) debts and taxes with preference under the laws of this state;
- (f) all other claims.

(2) No preference shall be given in the payment of any claim over any other claim of the same class, and a claim due and payable shall not be entitled to a preference over claims not due.

**Section 91A-3-806. Allowance of claims.** (1) As to claims presented in the manner described in section 91A-3-804 within the time limit prescribed in 91A-3-803, the personal representative may mail a notice to any claimant stating that the claim has been disallowed. If, after allowing or disallowing a claim, the personal representative changes his decision concerning the claim, he shall notify the claimant. The personal representative may not change a disallowance of a claim after the time for the claimant to file a petition for allowance or to commence a proceeding on the claim has run and the claim has been barred. Every claim which

is disallowed in whole or in part by the personal representative is barred so far as not allowed unless the claimant files a petition for allowance in the court or commences a proceeding against the personal representative not later than sixty (60) days after the mailing of the notice of disallowance or partial allowance if the notice warns the claimant of the impending bar. Failure of the personal representative to mail notice to a claimant of action on his claim for sixty (60) days after the time for original presentation of the claim has expired has the effect of a notice of allowance.

(2) Upon the petition of the personal representative or of a claimant in a proceeding for the purpose, the court may allow in whole or in part any claim or claims presented to the personal representative or filed with the clerk of the court in due time and not barred by subsection (1) of this section. Notice in this proceeding shall be given to the claimant, the personal representative and those other persons interested in the estate as the court may direct by order entered at the time the proceeding is commenced.

(3) A judgment in a proceeding in another court against a personal representative to enforce a claim against a decedent's estate is an allowance of the claim.

(4) Unless otherwise provided in any judgment in another court entered against the personal representative, allowed claims bear interest at the legal rate for the period commencing sixty (60) days after the time for original presentation of the claim has expired unless based on a contract making a provision for interest, in which case they bear interest in accordance with that provision.

**Section 91A-3-807. Payment of claims.** (1) Upon the expiration of four (4) months from the date of the first publication of the notice to creditors, the personal representative shall proceed to pay the claims allowed against the estate in the order of priority prescribed, after making provision for homestead, family and support allowances, for claims already presented which have not yet been allowed or whose allowance has been appealed, and for unbarred claims which may yet be presented, including costs and expenses of administration. By petition to the court in a proceeding for the purpose, or by appropriate motion if the administration is supervised, a claimant whose claim has been allowed but not paid as provided herein may secure an order directing the personal representative to pay the claim to the extent that funds of the estate are available for the payment.

(2) The personal representative at any time may pay any just claim which has not been barred, with or without formal presentation, but he is personally liable to any other claimant whose claim is allowed and who is injured by such payment if

(a) the payment was made before the expiration of the time limit stated in subsection (1) and the personal representative failed to require the payee to give adequate security for the refund of any of the payment necessary to pay other claimants; or

(b) the payment was made, due to the negligence or wilful fault of

the personal representative, in such manner as to deprive the injured claimant of his priority.

**Section 91A-3-808. Individual liability of personal representative.**

(1) Unless otherwise provided in the contract, a personal representative is not individually liable on a contract properly entered into in his fiduciary capacity in the course of administration of the estate unless he fails to reveal his representative capacity and identify the estate in the contract.

(2) A personal representative is individually liable for obligations arising from ownership or control of the estate or for torts committed in the course of administration of the estate only if he is personally at fault.

(3) Claims based on contracts entered into by a personal representative in his fiduciary capacity, on obligations arising from ownership or control of the estate or on torts committed in the course of estate administration may be asserted against the estate by proceeding against the personal representative in his fiduciary capacity, whether or not the personal representative is individually liable therefor.

(4) Issues of liability as between the estate and the personal representative individually may be determined in a proceeding for accounting, surcharge or indemnification or other appropriate proceeding.

**Section 91A-3-809. Secured claims.** Payment of a secured claim is upon the basis of the amount allowed if the creditor surrenders his security; otherwise payment is upon the basis of one of the following:

(1) if the creditor exhausts his security before receiving payment, unless precluded by other law upon the amount of the claim allowed less the fair value of the security; or

(2) if the creditor does not have the right to exhaust his security or has not done so, upon the amount of the claim allowed less the value of the security determined by converting it into money according to the terms of the agreement pursuant to which the security was delivered to the creditor, or by the creditor and personal representative by agreement, arbitration, compromise or litigation.

**Section 91A-3-810. Claims not due and contingent on unliquidated claims.** (1) If a claim which will become due at a future time or a contingent or unliquidated claim becomes due or certain before the distribution of the estate, and if the claim has been allowed or established by a proceeding, it is paid in the same manner as presently due and absolute claims of the same class.

(2) In other cases the personal representative or, on petition of the personal representative or the claimant in a special proceeding for the purpose, the court may provide for payment as follows:

(a) if the claimant consents, he may be paid the present or agreed value of the claim, taking any uncertainty into account;

(b) arrangement for future payment, or possible payment, on the happening of the contingency or on liquidation may be made by creating

a trust, giving a mortgage, obtaining a bond or security from a distributee, or otherwise.

**Section 91A-3-811. Counterclaims.** In allowing a claim the personal representative may deduct any counterclaim which the estate has against the claimant. In determining a claim against an estate a court shall reduce the amount allowed by the amount of any counterclaims and, if the counterclaims exceed the claim, render a judgment against the claimant in the amount of the excess. A counterclaim, liquidated or unliquidated, may arise from a transaction other than that upon which the claim is based. A counterclaim may give rise to relief exceeding in amount or different in kind from that sought in the claim.

**Section 91A-3-812. Execution and levies prohibited.** No execution may issue upon nor may any levy be made against any property of the estate under any judgment against a decedent or a personal representative, but this section shall not be construed to prevent the enforcement of mortgages, pledges or liens upon real or personal property in an appropriate proceeding.

**Section 91A-3-813. Compromise of claims.** When a claim against the estate has been presented in any manner, the personal representative, with the consent of the heirs or devisees or the court may, if it appears for the best interest of the estate, compromise the claim, whether due or not due, absolute or contingent, liquidated or unliquidated.

**Section 91A-3-814. Encumbered assets.** If any assets of the estate are encumbered by mortgage, pledge, lien, or other security interest, the personal representative may pay the encumbrance or any part thereof, renew or extend any obligation secured by the encumbrance or convey or transfer the assets to the creditor in satisfaction of his lien, in whole or in part, whether or not the holder of the encumbrance has filed a claim, if it appears to be for the best interest of the estate. Payment of an encumbrance does not increase the share of the distributee entitled to the encumbered assets unless the distributee is entitled to exoneration.

**Section 91A-3-815. Administration in more than one state; duty of personal representative.** (1) All assets of estates being administered in this state are subject to all claims, allowances and charges existing or established against the personal representative wherever appointed.

(2) If the estate either in this state or as a whole is insufficient to cover all family exemptions and allowances determined by the law of the decedent's domicile, prior charges and claims, after satisfaction of the exemptions, allowances and charges, each claimant whose claim has been allowed either in this state or elsewhere in administrations of which the personal representative is aware, is entitled to receive payment of an equal proportion of his claim. If a preference or security in regard to a claim is allowed in another jurisdiction but not in this state, the creditor so benefited is to receive dividends from local assets only upon the balance of his claim after deducting the amount of the benefit.

(3) In case the family exemptions and allowances, prior charges and claims of the entire estate exceed the total value of the portions of the estate being administered separately and this state is not the state of the

decedent's last domicile, the claims allowed in this state shall be paid their proportion if local assets are adequate for the purpose, and the balance of local assets shall be transferred to the domiciliary personal representative. If local assets are not sufficient to pay all claims allowed in this state the amount to which they are entitled, local assets shall be marshalled so that each claim allowed in this state is paid its proportion as far as possible, after taking into account all dividends on claims allowed in this state from assets in other jurisdictions.

**Section 91A-3-816. Final distribution to domiciliary personal representative.** The estate of a nonresident decedent being administered by a personal representative appointed in this state shall, if there is a personal representative of the decedent's domicile willing to receive it, be distributed to the domiciliary personal representative for the benefit of the successors of the decedent unless (1) by virtue of the decedent's will, if any, and applicable choice of law rules, the successors are identified pursuant to the local law of this state without reference to the local law of the decedent's domicile;

(2) the personal representative of this state, after reasonable inquiry, is unaware of the existence or identity of a domiciliary personal representative; or

(3) the court orders otherwise in a proceeding for a closing order under section 91A-3-1001 or incident to the closing of a supervised administration. In other cases, distribution of the estate of a decedent shall be made in accordance with the other parts of this article.

#### SPECIAL PROVISIONS RELATING TO DISTRIBUTION

**Section 91A-3-901. Successors' rights if no administration.** In the absence of administration, the heirs and devisees are entitled to the estate in accordance with the terms of a probated will or the laws of intestate succession. Devisees may establish title by the probated will to devised property. Persons entitled to property by homestead allowance, exemption or intestacy may establish title thereto by proof of the decedent's ownership, his death, and their relationship to the decedent. Successors take subject to all charges incident to administration, including the claims of creditors and allowances of surviving spouse and dependent children, and subject to the rights of others resulting from abatement, retainer, advancement, and ademption.

**Section 91A-3-902. Distribution; order in which assets appropriated; abatement.** (1) Except as provided in subsection (2) and except as provided in connection with the share of the surviving spouse who elects to take an elective share, shares of distributees abate, without any preference or priority as between real and personal property, in the following order:

- (a) property not disposed of by the will;
- (b) residuary devisees;
- (c) general devisees;
- (d) specific devisees.



For purposes of abatement, a general devise charged on any specific property or fund is a specific devise to the extent of the value of the property on which it is charged, and upon the failure or insufficiency of the property on which it is charged, a general devise to the extent of the failure or insufficiency. Abatement within each classification is in proportion to the amounts of property each of the beneficiaries would have received if full distribution of the property had been made in accordance with the terms of the will.

(2) If the will expresses an order of abatement, or if the testamentary plan or the express or implied purpose of the devise would be defeated by the order of abatement stated in subsection (1), the shares of the distributees abate as may be found necessary to give effect to the intention of the testator.

(3) If the subject of a preferred devise is sold or used incident to administration, abatement shall be achieved by appropriate adjustments in, or contribution from, other interests in the remaining assets.

Section 91A-3-903. **Successor's indebtedness offset against interest; defenses available.** The amount of a noncontingent indebtedness of a successor to the estate if due, or its present value if not due, shall be offset against the successor's interest; but the successor has the benefit of any defense which would be available to him in a direct proceeding for recovery of the debt.

Section 91A-3-904. **Interest on general pecuniary devise.** General pecuniary devises bear interest at the legal rate beginning one (1) year after the first appointment of a personal representative until payment, unless a contrary intent is indicated by the will.

Section 91A-3-905. **Penalty clause for contest.** A provision in a will purporting to penalize any interested person for contesting the will or instituting other proceedings relating to the estate is unenforceable if probable cause exists for instituting proceedings.

Section 91A-3-906. **Distribution in kind; valuation; method.** (1) Unless a contrary intention is indicated by the will, the distributable assets of a decedent's estate shall be distributed in kind to the extent possible through application of the following provisions:

(a) A specific devisee is entitled to distribution of the thing devised to him, and a spouse or child who has selected particular assets of an estate as provided in section 91A-2-402 shall receive the items selected.

(b) Any homestead or family allowance or devise payable in money may be satisfied by value in kind provided

(i) the person entitled to the payment has not demanded payment in cash;

(ii) the property distributed in kind is valued at fair market value as of the date of its distribution, and

(iii) no residuary devisee has requested that the asset in question remain a part of the residue of the estate.

(c) For the purpose of valuation under paragraph (b) securities regularly traded on recognized exchanges, if distributed in kind, are valued at the price for the last sale of like securities traded on the business day prior to distribution, or if there was no sale on that day, at the median between amounts bid and offered at the close of that day. Assets consisting of sums owed the decedent or the estate by solvent debtors as to which there is no known dispute or defense are valued at the sum due with accrued interest or discounted to the date of distribution. For assets which do not have readily ascertainable values, a valuation as of a date not more than thirty (30) days prior to the date of distribution, if otherwise reasonable, controls. For purposes of facilitating distribution, the personal representative may ascertain the value of the assets as of the time of the proposed distribution in any reasonable way, including the employment of qualified appraisers, even if the assets may have been previously appraised.

(d) The residuary estate shall be distributed in kind if there is no objection to the proposed distribution and it is practicable to distribute undivided interests. In other cases, residuary property may be converted into cash for distribution.

(2) After the probable charges against the estate are known, the personal representative may mail or deliver a proposal for distribution to all persons who have a right to object to the proposed distribution. The right of any distributee to object to the proposed distribution on the basis of the kind or value of asset he is to receive, if not waived earlier in writing, terminates if he fails to object in writing received by the personal representative within thirty (30) days after mailing or delivery of the proposal.

**Section 91A-3-907. Distribution in kind; evidence.** If distribution in kind is made, the personal representative shall execute an instrument or deed of distribution assigning, transferring or releasing the assets to the distributee as evidence of the distributee's title to the property.

**Section 91A-3-908. Distribution; right or title of distributee.** Proof that a distributee has received an instrument or deed of distribution of assets in kind, or payment in distribution, from a personal representative, is conclusive evidence that the distributee has succeeded to the interest of the estate in the distributed assets, as against all persons interested in the estate, except that the personal representative may recover the assets or their value if the distribution was improper.

**Section 91A-3-909. Improper distribution; liability of distributee.** Unless the distribution or payment no longer can be questioned because of adjudication, estoppel, or limitation, a distributee of property improperly distributed or paid, or a claimant who was improperly paid, is liable to return the property improperly received and its income since distribution if he has the property. If he does not have the property, then he is liable to return the value as of the date of disposition of the property improperly received and its income and gain received by him.

**Section 91A-3-910. Purchasers from distributees protected.** If property distributed in kind or a security interest therein is acquired by a purchaser, or lender, for value from a distributee who has received an

instrument or deed of distribution from the personal representative, the purchaser or lender takes title free of any claims of the estate and incurs no personal liability to the estate, whether or not the distribution was proper. To be protected under this provision, a purchaser or lender need not inquire whether a personal representative acted properly in making the distribution in kind.

**Section 91A-3-911. Partition for purpose of distribution.** When two (2) or more heirs or devisees are entitled to distribution of undivided interests in any real or personal property of the estate, the personal representative or one (1) or more of the heirs or devisees may petition the court prior to the formal or informal closing of the estate, to make partition. After notice to the interested heirs or devisees, the court shall partition the property in the same manner as provided by the law for civil actions of partition. The court may direct the personal representative to sell any property which cannot be partitioned without prejudice to the owners and which cannot conveniently be allotted to any one party.

**Section 91A-3-912. Private agreements among successors to decedent binding on personal representative.** Subject to the rights of creditors and taxing authorities, competent successors may agree among themselves to alter the interests, shares, or amounts to which they are entitled under the will of the decedent, or under the laws of intestacy, in any way that they provide in a written contract executed by all who are affected by its provisions. The personal representative shall abide by the terms of the agreement subject to his obligation to administer the estate for the benefit of creditors, to pay all taxes and costs of administration, and to carry out the responsibilities of his office for the benefit of any successors of the decedent who are not parties. Personal representatives of decedents' estates are not required to see to the performance of trusts if the trustee thereof is another person who is willing to accept the trust. Accordingly, trustees of a testamentary trust are successors for the purposes of this section. Nothing herein relieves trustees of any duties owed to beneficiaries of trusts.

**Section 91A-3-913. Distribution to trustee.** (1) Before distributing to a trustee, the personal representative may require that the trust be registered if the state in which it is to be administered provides for registration and that the trustee inform the beneficiaries as provided in section 91A-7-303.

(2) If the trust instrument does not excuse the trustee from giving bond, the personal representative may petition the appropriate court to require that the trustee post bond if he apprehends that distribution might jeopardize the interests of persons who are not able to protect themselves, and he may withhold distribution until the court has acted.

(3) No inference of negligence on the part of the personal representative shall be drawn from his failure to exercise the authority conferred by subsections (1) and (2).

**Section 91A-3-914. Disposition of unclaimed assets.** (1) If an heir, devisee or claimant cannot be found, the personal representative shall distribute the share of the missing person to his conservator, if any,

otherwise to the department of revenue to be deposited in the state escheat fund as provided in chapter 5, Title 91, R.C.M. 1947, as amended.

(2) Any person having any claim to a share deposited in the state escheat fund under the provisions of this code shall follow the procedures set out in sections 91-501 through 91-526, concerning escheated estates to claim such share.

Section 91A-3-915. **Distribution to person under disability.** A personal representative may discharge his obligation to distribute to any person under legal disability by distributing to his conservator, or any other person authorized by this code or otherwise to give a valid receipt and discharge for the distribution.

Section 91A-3-916. **Apportionment of estate taxes.** (1) For purposes of this section:

(a) "estate" means the gross estate of a decedent as determined for the purpose of federal estate tax and the estate tax payable to this state;

(b) "person" means any individual, partnership, association, joint stock company, corporation, government, political subdivision, governmental agency, or local governmental agency;

(c) "person interested in the estate" means any person entitled to receive, or who has received, from a decedent or by reason of the death of a decedent any property or interest therein included in the decedent's estate. It includes a personal representative, conservator, and trustee;

(d) "state" means any state, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico;

(e) "tax" means the federal estate tax and any additional inheritance, estate or death taxes imposed by the laws of any state and interest and penalties imposed in addition to the tax;

(f) "fiduciary" means personal representative or trustee.

(2) Unless the will otherwise provides, the tax shall be apportioned among all persons interested in the estate. The apportionment is to be made in the proportion that the value of the interest of each person interested in the estate bears to the total value of the interests of all persons interested in the estate. The values used in determining the tax are to be used for that purpose. If the decedent's will directs a method of apportionment of tax different from the method described in this code, the method described in the will controls.

(3)(a) The court in which venue lies for the administration of the estate of a decedent, on petition for the purpose may determine the apportionment of the tax.

(b) If the court finds that it is inequitable to apportion interest and penalties in the manner provided in subsection (2), because of special circumstances, it may direct apportionment thereof in the manner it finds equitable.

(c) If the court finds that the assessment of penalties and interest

assessed in relation to the tax is due to delay caused by the negligence of the fiduciary, the court may charge him with the amount of the assessed penalties and interest.

(d) In any action to recover from any person interested in the estate the amount of the tax apportioned to the person in accordance with this code the determination of the court in respect thereto shall be *prima facie* correct.

(4)(a) The personal representative or other person in possession of the property of the decedent required to pay the tax may withhold from any property distributable to any person interested in the estate, upon its distribution to him, the amount of tax attributable to his interest. If the property in possession of the personal representative or other person required to pay the tax and distributable to any person interested in the estate is insufficient to satisfy the proportionate amount of the tax determined to be due from the person, the personal representative or other person required to pay the tax may recover the deficiency from the person interested in the estate. If the property is not in the possession of the personal representative or the other person required to pay the tax, the personal representative or the other person required to pay the tax may recover from any person interested in the estate the amount of the tax apportioned to the person in accordance with this act.

(b) If property held by the personal representative is distributed prior to final apportionment of the tax, the distributee shall provide a bond or other security for the apportionment liability in the form and amount prescribed by the personal representative.

(5)(a) In making an apportionment, allowances shall be made for any exemptions granted, any classification made of persons interested in the estate and for any deductions and credits allowed by the law imposing the tax.

(b) Any exemption or deduction allowed by reason of the relationship of any person to the decedent or by reason of the purposes of the gift inures to the benefit of the person bearing such relationship or receiving the gift; but if an interest is subject to a prior present interest which is not allowable as a deduction, the tax apportionable against the present interest shall be paid from principal.

(c) Any deduction for property previously taxed and any credit for gift taxes or death taxes of a foreign country paid by the decedent or his estate inures to the proportionate benefit of all persons liable to apportionment.

(d) Any credit for inheritance, succession or estate taxes or taxes in the nature thereof applicable to property or interests includable in the estate, inures to the benefit of the persons or interests chargeable with the payment thereof to the extent proportionately that the credit reduces the tax.

(e) To the extent that property passing to or in trust for a surviving spouse or any charitable, public or similar gift or devise is not an allowable deduction for purposes of the tax solely by reason of an inheritance tax or other death tax imposed upon and deductible from the property,

the property is not included in the computation provided for in subsection (2) hereof, and to that extent no apportionment is made against the property. The sentence immediately preceding does not apply to any case if the result would be to deprive the estate of a deduction otherwise allowable under section 2053(d) of the Internal Revenue Code of 1954, as amended, of the United States, relating to deduction for state death taxes on transfers for public, charitable, or religious uses.

(6) No interest in income and no estate for years or for life or other temporary interest in any property or fund is subject to apportionment as between the temporary interest and the remainder. The tax on the temporary interest and the tax, if any, on the remainder is chargeable against the corpus of the property or funds subject to the temporary interest and remainder.

(7) Neither the personal representative nor other person required to pay the tax is under any duty to institute any action to recover from any person interested in the estate the amount of the tax apportioned to the person until the expiration of the three (3) months next following final determination of the tax. A personal representative or other person required to pay the tax who institutes the action within a reasonable time after the three (3) months' period is not subject to any liability or surcharge because any portion of the tax apportioned to any person interested in the estate was collectable at a time following the death of the decedent but thereafter became uncollectable. If the personal representative or other person required to pay the tax cannot collect from any person interested in the estate the amount of the tax apportioned to the person, the amount not recoverable shall be equitably apportioned among the other persons interested in the estate who are subject to apportionment.

(8) A personal representative acting in another state or a person required to pay the tax domiciled in another state may institute an action in the courts of this state and may recover a proportionate amount of the federal estate tax, of an estate tax payable to another state or of a death duty due by a decedent's estate to another state, from a person interested in the estate who is either domiciled in this state or who owns property in this state subject to attachment or execution. For the purposes of the action the determination of apportionment by the court having jurisdiction of the administration of the decedent's estate in the other state is prima facie correct.

### CLOSING ESTATES

**Section 91A-3-1001. Formal proceedings terminating administration; testate or intestate; order of general protection.** (1) A personal representative or any interested person may petition for an order of complete settlement of the estate. The personal representative may petition at any time, and any other interested person may petition after one (1) year from the appointment of the original personal representative except that no petition under this section may be entertained until the time for presenting claims which arose prior to the death of the decedent has expired. The petition may request the court to determine testacy, if not previously determined, to consider the final account or compel or approve an accounting and distribution, to construe any will or determine heirs

and adjudicate the final settlement and distribution of the estate. After notice to all interested persons and hearing the court may enter an order or orders, on appropriate conditions, determining the persons entitled to distribution of the estate, and, as circumstances require, approving settlement and directing or approving distribution of the estate and discharging the personal representative from further claim or demand of any interested person.

(2) If one (1) or more heirs or devisees were omitted as parties in, or were not given notice of, a previous formal testacy proceeding, the court, on proper petition for an order of complete settlement of the estate under this section, and after notice to the omitted or unnotified persons and other interested parties determined to be interested on the assumption that the previous order concerning testacy is conclusive as to those given notice of the earlier proceeding, may determine testacy as it affects the omitted persons and confirm or alter the previous order of testacy as it affects all interested persons as appropriate in the light of the new proofs. In the absence of objection by an omitted or unnotified person, evidence received in the original testacy proceeding shall constitute prima facie proof of due execution of any will previously admitted to probate, or of the fact that the decedent left no valid will if the prior proceedings determined this fact.

**Section 91A-3-1002. Formal proceedings terminating testate administration; order construing will without adjudicating testacy.** A personal representative administering an estate under an informally probated will or any devisee under an informally probated will may petition for an order of settlement of the estate which will not adjudicate the testacy status of the decedent. The personal representative may petition at any time, and a devisee may petition after one (1) year, from the appointment of the original personal representative, except that no petition under this section may be entertained until the time for presenting claims which arose prior to the death of the decedent has expired. The petition may request the court to consider the final account or compel or approve an accounting and distribution, to construe the will and adjudicate final settlement and distribution of the estate. After notice to all devisees and the personal representative and hearing, the court may enter an order or orders, on appropriate conditions, determining the persons entitled to distribution of the estate under the will, and, as circumstances require, approving settlement and directing or approving distribution of the estate and discharging the personal representative from further claim or demand of any devisee who is a party to the proceeding and those he represents. If it appears that a part of the estate is intestate, the proceedings shall be dismissed or amendments made to meet the provisions of section 91A-3-1001.

**Section 91A-3-1003. Closing estates by sworn statement of personal representative.** (1) Unless prohibited by order of the court and except for estates being administered in supervised administration proceedings, a personal representative may close an estate by filing with the court no earlier than six (6) months after the date of original appointment of a general personal representative for the estate, a verified statement stating that he, or a prior personal representative whom he has succeeded, has or have:

(a) published notice to creditors as provided by section 91A-3-801 and that the first publication occurred more than six (6) months prior to date of the statement;

(b) fully administered the estate of the decedent by making payment, settlement or other disposition of all claims which were presented, expenses of administration and estate, inheritance and other death taxes, except as specified in the statement, and that the assets of the estate have been distributed to the persons entitled. If any claims remain undischarged, the statement shall state whether the personal representative has distributed the estate subject to possible liability with the agreement of the distributees or it shall state in detail other arrangements which have been made to accommodate outstanding liabilities; and

(c) sent a copy thereof to all distributees of the estate and to all creditors or other claimants of whom he is aware whose claims are neither paid nor barred and has furnished a full account in writing of his administration to the distributees whose interests are affected thereby.

(d) Complied with the provisions of section 91A-3-1004.

(2) If no proceedings involving the personal representative are pending in the court one (1) year after the closing statement is filed, the appointment of the personal representative terminates.

**Section 91A-3-1004. Department of revenue certificate showing taxes paid; prerequisite of closing estate.** In all probate proceedings under this code before final distribution to successors is made and before any petition is granted under sections 91A-3-1001, 91A-3-1002, or 91A-3-1003, there shall have been filed with the clerk a certificate from the department of revenue stating that any inheritance tax due on the assets of the estate has been paid. This section shall not prohibit such partial distribution as may become necessary in the course of administration.

**Section 91A-3-1005. Liability of distributees to claimants.** After assets of an estate have been distributed and subject to section 91A-3-1007, an undischarged claim not barred may be prosecuted in a proceeding against one (1) or more distributees. No distributee shall be liable to claimants for amounts in excess of the value of his distribution as of the time of distribution. As between distributees, each shall bear the cost of satisfaction of unbarred claims as if the claim had been satisfied in the course of administration. Any distributee who shall have failed to notify other distributees of the demand made upon him by the claimant in sufficient time to permit them to join in any proceeding in which the claim was asserted against him loses his right of contribution against other distributees.

**Section 91A-3-1006. Limitations on proceedings against personal representative.** Unless previously barred by adjudication and except as provided in the closing statement, the rights of successors and of creditors whose claims have not otherwise been barred against the personal representative for breach of fiduciary duty are barred unless a proceeding to assert the same is commenced within six (6) months after the filing of the closing statement. The rights thus barred do not include rights to



recover from a personal representative for fraud, misrepresentation, or inadequate disclosure related to the settlement of the decedent's estate.

**Section 91A-3-1007. Limitations on actions and proceedings against distributees.** Unless previously adjudicated in a formal testacy proceeding or in a proceeding settling the accounts of a personal representative or otherwise barred, the claim of any claimant to recover from a distributee who is liable to pay the claim, and the right of any heir or devisee, or of a successor personal representative acting in their behalf, to recover property improperly distributed or the value thereof from any distributee is forever barred at the later of three (3) years after the decedent's death; or one (1) year after the time of distribution thereof. This section does not bar an action to recover property or value received as the result of fraud.

**Section 91A-3-1008. Certificate discharging liens securing fiduciary performance.** After his appointment has terminated, the personal representative, his sureties, or any successor of either, upon the filing of a verified application showing, so far as is known by the applicant, that no action concerning the estate is pending in any court, is entitled to receive a certificate from the clerk that the personal representative appears to have fully administered the estate in question. The certificate evidences discharge of any lien on any property given to secure the obligation of the personal representative in lieu of bond or any surety, but does not preclude action against the personal representative or the surety.

**Section 91A-3-1009. Subsequent administration.** If other property of the estate is discovered after an estate has been settled and the personal representative discharged or after one (1) year after a closing statement has been filed, the court upon petition of any interested person and upon notice as it directs may appoint the same or a successor personal representative to administer the subsequently discovered estate. If a new appointment is made, unless the court orders otherwise, the provisions of this code apply as appropriate; but no claim previously barred may be asserted in the subsequent administration.

**Section 91A-3-1010. Lien of state on estate property for unpaid inheritance taxes.** All property which is affected by the death of the decedent and on which inheritance, estate or death taxes are due under the laws of this state is subject to the lien of the state of Montana until such taxes have been paid. This lien follows all property sold in the course of administration or distributed under this code until such time as all inheritance taxes have been paid and a receipt showing payment thereof has been filed with the clerk of court, subject to applicable statutes of limitations on state inheritance tax liens. The department of revenue may issue a consent to transfer any real or personal property in the estate of a decedent free of the lien for unpaid inheritance taxes upon proper application and under such rules and regulations as the department shall prescribe provided that such transfer shall not jeopardize payment of the inheritance taxes due.

#### COMPROMISE OF CONTROVERSIES

**Section 91A-3-1101. Effect of approval of agreements involving**

**trusts, inalienable interests, or interests of third persons.** A compromise of any controversy as to admission to probate of any instrument offered for formal probate as the will of a decedent, the construction, validity, or effect of any probated will, the rights or interests in the estate of the decedent, of any successor, or the administration of the estate, if approved in a formal proceeding in the court for that purpose, is binding on all the parties thereto including those unborn, unascertained or who could not be located. An approved compromise is binding even though it may affect a trust or an inalienable interest. A compromise does not impair the rights of creditors or of taxing authorities who are not parties to it.

**Section 91A-3-1102. Procedure for securing court approval of compromises.** The procedure for securing court approval of a compromise is as follows: (1) The terms of the compromise shall be set forth in an agreement in writing which shall be executed by all competent persons and parents acting for any minor child having beneficial interests or having claims which will or may be affected by the compromise. Execution is not required by any person whose identity cannot be ascertained or whose whereabouts is unknown and cannot reasonably be ascertained.

(2) Any interested person, including the personal representative or a trustee, then may submit the agreement to the court for its approval and for execution by the personal representative, the trustee of every affected testamentary, trust, and other fiduciaries and representatives.

(3) After notice to all interested persons or their representatives, including the personal representative of the estate and all affected trustees of trusts, the court, if it finds that the contest or controversy is in good faith and that the effect of the agreement upon the interests of persons represented by fiduciaries or other representatives is just and reasonable, shall make an order approving the agreement and directing all fiduciaries under its supervision to execute the agreement. Minor children represented only by their parents may be bound only if their parents join with other competent persons in execution of the compromise. Upon the making of the order and the execution of the agreement, all further disposition of the estate is in accordance with the terms of the agreement.

**PROCEDURE FOR COLLECTION OF PERSONAL PROPERTY BY  
AFFIDAVIT,  
TERMINATION OF JOINT TENANCIES AND LIFE ESTATES,  
AND SUMMARY ADMINISTRATION PROCEDURE  
FOR SMALL ESTATES**

**Section 91A-1-1201. Collection of personal property by affidavit.** (1) Thirty (30) days after the death of a decedent, any person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action belonging to the decedent shall make payment of the indebtedness or deliver the tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action to a person claiming to be the successor of the decedent upon being presented an affidavit made by or on behalf of the successor stating that:

(a) the value of the entire estate, wherever located, less liens and encumbrances, does not exceed fifteen hundred dollars (\$1,500);

(b) thirty (30) days have elapsed since the death of the decedent;

(c) no application or petition for the appointment on a personal representative is pending or has been granted in any jurisdiction; and

(d) the claiming successor is entitled to payment or delivery of the property.

(2) A transfer agent of any security shall change the registered ownership on the books of a corporation from the decedent to the successor or successors upon the presentation of an affidavit as provided in subsection (1).

**Section 91A-3-1202. Effect of affidavit.** The person paying, delivering, transferring, or issuing personal property or the evidence thereof pursuant to affidavit is discharged and released to the same extent as if he dealt with a personal representative of the decedent. He is not required to see to the application of the personal property or evidence thereof or to inquire into the truth of any statement in the affidavit. If any person to whom an affidavit is delivered refuses to pay, deliver, transfer, or issue any personal property or evidence thereof, it may be recovered or its payment, delivery, transfer, or issuance compelled upon proof of their right in a proceeding brought for the purpose by or on behalf of the persons entitled thereto. Any person to whom payment, delivery, transfer or issuance is made is answerable and accountable therefor to any person representative of the estate or to any other person having a superior right.

**Section 91A-3-1203. Small estates; summary administrative procedure.** If it appears from the inventory and appraisal that the value of the net distributable estate does not exceed one thousand five hundred dollars (\$1,500), or the value of the entire estate, less liens and encumbrances, does not exceed homestead allowance, exempt property, family allowance, costs and expenses of administration, reasonable funeral expenses, and reasonable and necessary medical and hospital expenses of the last illness of the decedent, the personal representative, without giving notice to creditors, may immediately disburse and distribute the estate to the persons entitled thereto and file a closing statement as provided in section 91A-3-1202.

**Section 91A-3-1204. Small estates; closing by sworn statement of personal representative.** (1) Unless prohibited by order of the court and except for estates being administered by supervised personal representatives, a personal representative may close an estate administered under the summary procedures of section 91A-3-1201 by filing with the court, at any time after disbursement and distribution of the estate, a verified statement stating that:

(a) to the best knowledge of the personal representative, the value of the net distributable estate did not exceed one thousand five hundred dollars (\$1,500), or the value of the entire estate, less liens and encumbrances, did not exceed homestead allowance, exempt property, family

allowance, costs and expenses of administration, reasonable funeral expenses, and reasonable, necessary medical and hospital expenses of the last illness of the decedent;

(b) the personal representative has fully administered the estate by payment of inheritance taxes and by disbursing and distributing it to the persons entitled thereto; and

(c) the personal representative has sent a copy of the closing statement to all distributees of the estate and to all creditors or other claimants of whom he is aware whose claims are neither paid nor barred and has furnished a full account in writing of his administration to the distributees whose interests are affected.

(2) If no actions or proceedings involving the personal representative are pending in the court one (1) year after the closing statement is filed, the appointment of the personal representative terminates.

(3) A closing statement filed under this section has the same effect as one filed under section 91A-3-1005.

**Section 91A-3-1205. Procedures for termination of joint tenancies and life estates.** (1) If the inventory in an estate asserts that all or any part of the property listed therein was held by the decedent in joint tenancy or that the decedent held a life estate in any of the property listed, or for any other reason a determination of inheritance tax is required, the personal representative shall file with the department of revenue copies of the instruments by which each such joint tenancy or life estate was created or other interest requiring determination of inheritance tax came into being or other evidence of the existence of such joint tenancy or life estate or other property interest requiring the determination of inheritance tax. The department of revenue shall examine the documents and shall determine the existence of each asserted joint tenancy, life estate or other property interest requiring a determination of inheritance tax.

(2) If it shall be determined that all of the property listed in the inventory was held in joint tenancy or was held by the decedent as a life estate or requires the determination of inheritance tax, or any combination thereof, the department of revenue shall issue its certificate showing that all such property was in joint tenancy or was held as a life estate or requires only the determination of inheritance tax, and stating the names of the surviving owners, remaindermen or possessors thereof or persons entitled to an interest therein. The certificate shall also contain an interlocutory certificate by the department of revenue as to the inheritance tax, if any, due the state of Montana by reason of the death of the decedent. The certificate shall be mailed to the clerk of the appropriate court and to the personal representative. If no dispute exists as to the amount of tax due, if any, the tax shall be paid as provided in the inheritance tax laws of this state. Upon the filing of the receipt showing payment of the tax, the clerk of court shall issue a certificate stating that the joint tenancies or life estates are terminated or other interest in property requiring determination of inheritance tax is properly vested, specifically describing the property and designating the surviving owners or

possessors, or persons entitled to an interest therein. This certificate may be filed in the office of the clerk and recorder of any county in which any such property is located.

(3) (a) If not all the property in the inventory was joint tenancy or life estate property or property requiring only the determination of inheritance tax, the department of revenue shall:

(i) determine the inheritance tax, if any, due to the state of Montana by reason of the death of the decedent and mail its interlocutory certificate to the clerk of the appropriate court and to the personal representative, showing the amount of tax so determined;

(ii) determine what property listed in the inventory was joint tenancy or life estate property or property requiring only the determination of inheritance tax and mail to the clerk of the appropriate court and to the personal representative its certificate describing such joint tenancy and life estate property or property requiring only the determination of inheritance tax and naming the surviving owners or possessors thereof or persons entitled to an interest therein.

(b) If the value of the property not in joint tenancy or held by the decedent as a life estate or requiring only the determination of inheritance tax does not exceed the maximum for summary administration, the personal representative shall proceed under the summary procedure as to the non-joint tenancy or life estate property which requires more than just the determination of inheritance tax shall pay any inheritance tax and shall file with the appropriate clerk and recorder a certified copy of the department of revenue's list of joint tenancy property.

(c) If the value of the property not held in joint tenancy or as a life estate and not held as property requiring only a determination of inheritance tax does not permit a summary procedure, the personal representative shall proceed under the applicable statutes for administration and distribution and shall include in his decree or instrument of final distribution the list of such joint tenancy or life estate property or property requiring determination of inheritance tax, listing the surviving owners or possessors thereof or persons entitled to an interest therein. Such decree or instrument of final distribution shall be deemed a termination of the joint tenancy or life estate or vesting of the property interest.

(4) If disputes exist as to tax computation, they shall be resolved as provided under the laws applicable to the determination of inheritance taxes.

#### FOREIGN PERSONAL REPRESENTATIVES; ANCILLARY ADMINISTRATION DEFINITIONS

Section 91A-4-101. **Definitions.** In this article:

(1) "Local administration" means administration by a personal representative appointed in this state pursuant to appointment proceedings described in article III.

(2) "Local personal representative" includes any personal representa-

tive appointed in this state pursuant to appointment proceedings described in article III and excludes foreign personal representatives who acquire the power of a local personal representative pursuant to section 91A-4-205.

(3) "Resident creditor" means a person domiciled in, or doing business in this state, who is, or could be, a claimant against an estate of a nonresident decedent.

#### POWERS OF FOREIGN PERSONAL REPRESENTATIVES

**Section 91A-4-201. Filing letters and inventory with local district court; copy to department of revenue.** (1) The domiciliary foreign personal representative of the estate of a nonresident decedent who wishes to receive payment and delivery as described in section 91A-4-204 or to exercise the powers over assets described in section 91A-4-207 shall file in duplicate with a district court in this state in a county in which property belonging to the decedent is located authenticated copies of his appointment and of any official bond he has given, an inventory and appraisal of the property of the nonresident decedent located in this state, which inventory shall contain the information prescribed in section 91A-3-706, and an affidavit stating

(a) the date of death of the nonresident decedent, and

(b) that no local administration or application or petition therefor is pending in this state.

(2) Upon receiving the information required by subsection one (1), the clerk of court shall issue a certificate to the domiciliary foreign personal representative identifying him as having registered with the district court and stating the name and date of death of the decedent.

(3) The clerk shall also immediately forward a copy of the appointment, affidavit and inventory and appraisal required by subsection (1) to the department of revenue.

**Section 91A-4-202. Determination of inheritance taxes; certificate of department of revenue showing taxes paid, waived or bond posted.** (1) The department of revenue shall determine what inheritance tax, if any, is owing on the property of the nonresident decedent located in this state and shall send notice of the tax owing to the domiciliary foreign personal representative and to the clerk of court.

(2) Upon payment of the inheritance tax due, or if no tax is owing, the department of revenue shall issue a certificate to the domiciliary foreign personal representative indicating that inheritance taxes either are not owing or have been paid and shall send a copy of the certificate to the clerk of court.

(3) The department may issue an order waiving inheritance taxes on a particular item of property under such terms and circumstances as the department shall determine.

(4) Upon the posting by the domiciliary foreign personal representative of satisfactory bond, the department may issue a certificate indicating

that bond has been posted sufficient to secure any inheritance tax due on the in-state property of the nonresident decedent. This certificate may be issued at any time after the filing of the inventory with the clerk of court.

**Section 91A-4-203. Right to inspect estate assets for inventory.** Any person holding any property of a nonresident decedent, including any instrument evidencing a debt, obligation, stock or chose in action, shall permit the domiciliary foreign personal representative of the nonresident decedent to inspect and appraise the property for purposes of completing the inventory and appraisal called for in section 91A-4-201(1) upon being presented with proof of his appointment and an affidavit made by or on behalf of the representative stating

- (1) the date of death of the nonresident decedent,
- (2) that no local administration or application or petition therefor is pending in this state, and
- (3) that the domiciliary foreign personal representative is entitled to make such inspection and appraisal.

**Section 91A-4-204. Payment of debt and delivery of property to domiciliary foreign personal representative without local administration.** At any time after the expiration of sixty (60) days from the death of a nonresident decedent, any person indebted to the estate of the nonresident decedent or having possession or control of personal property, or of an instrument evidencing a debt, obligation, stock or chose in action belonging to the estate of the nonresident decedent may pay the debt, deliver the personal property, or the instrument evidencing the debt, obligation, stock or chose in action, to the domiciliary foreign personal representative of the nonresident decedent upon being presented with a certificate from the clerk of the court for the county where the domiciliary foreign personal representative has filed his affidavit as described in section 91A-4-201 and a certificate from the department of revenue, as described in section 91A-4-202.

**Section 91A-4-205. Payment on delivery discharges.** Payment or delivery made in good faith on the basis of the certificate of the clerk of court and the certificate of the department of revenue releases the debtor or person having possession of the personal property to the same extent as if payment or delivery had been made to a local personal representative.

**Section 91A-4-206. Resident creditor notice; court order.** (1) Payment or delivery under section 91A-4-204 may not be made if a resident creditor of the nonresident decedent has notified the debtor of the nonresident decedent or the person having possession of the personal property belonging to the nonresident decedent that the debt should not be paid nor the property delivered to the domiciliary foreign personal representative.

(2) In cases under subsection (1) the foreign personal representative must seek an order of the court in which he has filed his affidavit to obtain payment or delivery unless the notification by the resident creditor is withdrawn.

**Section 91A-4-207. Powers of domiciliary foreign personal representative generally; powers as special administrator.** (1) Except as limited by section 91A-4-206, a domiciliary foreign personal representative who has complied with sections 91A-4-201 and 91A-4-202, may exercise as to assets in this state all powers of a local personal representative and may maintain actions and proceedings in this state subject to any conditions imposed upon nonresident parties generally.

(2) A domiciliary foreign personal representative who has complied with all the requirements of section 91A-4-201(1) except for the filing of an inventory and appraisal, may, when necessary to protect the estate of the decedent and upon appointment by the clerk of court, exercise the powers of a special administrator described in sections 91A-3-614 through 91A-3-618.

**Section 91A-4-208. Powers of representatives in transition.** The power of a domiciliary foreign personal representative under section 91A-4-204 or 91A-4-207 shall be exercised only if there is no administration or application therefor pending in this state. An application or petition for local administration of the estate terminates the power of the foreign personal representative to act under section 91A-4-207, but the local court may allow the foreign personal representative to exercise limited powers to preserve the estate. No person who, before receiving actual notice of a pending local administration, has changed his position in reliance upon the powers of a foreign personal representative shall be prejudiced by reason of the application or petition for, or grant of, local administration. The local personal representative is subject to all duties and obligations which have accrued by virtue of the exercise of the powers by the foreign personal representative and may be substituted for him in any action or proceedings in this state.

**Section 91A-4-209. Ancillary and other local administrations; provisions governing.** In respect to a nonresident decedent, the provisions of this code govern (1) proceedings, if any, in a court of this state for probate of the will, appointment, removal, supervision, and discharge of the local personal representative, and any other order concerning the estate; and

(2) the status, powers, duties and liabilities of any local personal representative and the rights of claimants, purchasers, distributees and others in regard to a local administration.

#### JURISDICTION OVER FOREIGN REPRESENTATIVES

**Section 91A-4-301. Jurisdiction by act of foreign personal representative.** A foreign personal representative by doing any of the acts described in sections 91A-4-201 through 91A-4-207, or by doing any act as a personal representative in this state that would have given the state jurisdiction over him as an individual, submits himself personally to the jurisdiction of the courts of this state in any proceeding relating to the estate.

Jurisdiction which arises solely from receiving payment of money or taking delivery of personal property is limited to the money or value of personal property collected.



Section 91A-4-302. **Jurisdiction by act of decedent.** In addition to jurisdiction conferred by section 91A-4-301, a foreign personal representative is subject to the jurisdiction of the courts of this state to the same extent that his decedent was subject to jurisdiction immediately prior to death.

Section 91A-4-303. **Service on foreign personal representative.** (1) Service of process may be made upon the foreign personal representative by registered or certified mail, addressed to his last reasonably ascertainable address, requesting a return receipt signed by addressee only. Notice by ordinary first class mail is sufficient if registered or certified mail service to the addressee is unavailable. Service may be made upon a foreign personal representative in the manner in which service could have been made under other laws of this state on either the foreign personal representative or his decedent immediately prior to death.

(2) If service is made upon a foreign personal representative as provided in subsection (1), he shall be allowed at least thirty (30) days within which to appear or respond.

#### JUDGMENTS AND PERSONAL REPRESENTATIVE

Section 91A-4-401. **Effect of adjudication for or against personal representative.** An adjudication rendered in any jurisdiction in favor of or against any personal representative of the estate is as binding on the local personal representative as if he were a party to the adjudication.

#### PROTECTION OF PERSONS UNDER DISABILITY AND THEIR PROPERTY GENERAL PROVISIONS

Section 91A-5-101. **Definitions and use of terms.** Unless otherwise apparent from the context, in this code:

(1) "incapacitated person" means any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, or other cause (except minority) to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person;

(2) "protective proceeding" means a proceeding under the provisions of section 91A-5-401 to determine that a person cannot effectively manage or apply his estate to necessary ends, either because he lacks the ability or is otherwise inconvenienced, or because he is a minor, and to secure administration of his estate by a conservator or other appropriate relief;

(3) "protected person" means a minor or other person for whom a conservator has been appointed or other protective order has been made;

(4) "ward" means a person for whom a guardian has been appointed. A "minor ward" is a minor for whom a guardian has been appointed solely because of minority.

Section 91A-5-102. **Jurisdiction of subject matter; consolidation of proceedings.** (1) The court has jurisdiction over protective proceedings and guardianship proceedings.

(2) When both guardianship and protective proceedings as to the same person are commenced or pending in the same court, the proceedings may be consolidated.

**Section 91A-5-103. Facility of payment or agreement.** Any person under a duty to pay or deliver money or personal property to a minor may perform this duty, in amounts not exceeding five thousand dollars (\$5,000) per annum, by paying or delivering the money or property to:

(1) the minor, if he has attained the age of eighteen (18) years or is married;

(2) any person having the care and custody of the minor with whom the minor resides;

(3) a guardian of the minor; or

(4) a financial institution incident to a deposit in a federally insured savings account in the sole name of the minor and giving notice of the deposit to the minor.

This section does not apply if the person making payment or delivery has actual knowledge that a conservator has been appointed or proceedings for appointment of a conservator of the estate of the minor are pending. The persons, other than the minor or any financial institution under (4) above, receiving money or property for a minor, are obligated to apply the money to the support and education of the minor, but may not pay themselves except by way of reimbursement for out-of-pocket expenses for goods and services necessary for the minor's support. Any excess sums shall be preserved for future support of the minor and any balance not so used and any property received for the minor must be turned over to the minor when he attains majority. Persons who pay or deliver in accordance with provisions of this section are not responsible for the proper application thereof.

**Section 91A-5-104. Delegation of powers by parent or guardian.** A parent or a guardian of a minor or incapacitated person, by a properly executed power of attorney, may delegate to another person, for a period not exceeding six (6) months, any of his powers regarding care, custody, or property of the minor child or ward, except his power to consent to marriage or adoption of a minor ward.

#### GUARDIANS OF MINORS

**Section 91A-5-201. Status of guardian of minor; general.** A person becomes a guardian of a minor by acceptance of a testamentary appointment or upon appointment by the court. The guardianship status continues until terminated, without regard to the location from time to time of the guardian and minor ward.

**Section 91A-5-202. Testamentary appointment of guardian of minor.** The parent of a minor may appoint by will a guardian of an unmarried minor. Subject to the right of the minor under section 91A-5-203, a testamentary appointment becomes effective upon filing the guardian's acceptance in the court in which the will is probated, if before acceptance, both parents are dead or the surviving parent is adjudged

incapacitated. If both parents are dead, an effective appointment by the parent who died later has priority. This state recognizes a testamentary appointment effected by filing the guardian's acceptance under a will probated in another state which is the testator's domicile. Upon acceptance of appointment, written notice of acceptance must be given by the guardian to the minor and to the person having his care or to his nearest adult relations.

**Section 91A-5-203. Objection by minor of fourteen (14) or older to testamentary appointment.** A minor of fourteen (14) or more years may prevent an appointment of his testamentary guardian from becoming effective, or may cause a previously accepted appointment to terminate, by filing with the court in which the will is probated a written objection to the appointment before it is accepted or within thirty (30) days after notice of its acceptance. An objection may be withdrawn. An objection does not preclude appointment by the court in a proper proceeding of the testamentary nominee, or any other suitable person.

**Section 91A-5-204. Court appointment of guardian of minor; conditions for appointment.** The court may appoint a guardian for an unmarried minor if all parental rights of custody have been terminated or suspended by circumstances or prior court order. A guardian appointed by will as provided in section 91A-5-202 whose appointment has not been prevented or nullified under 91A-5-203 has priority over any guardian who may be appointed by the court but the court may proceed with an appointment upon a finding that the testamentary guardian has failed to accept the testamentary appointment within thirty (30) days after notice of the guardianship proceeding.

**Section 91A-5-205. Court appointment of guardian of minor; venue.** The venue for guardianship proceedings for a minor is in the place where the minor resides or is present.

**Section 91A-5-206. Court appointment of guardian of minor; qualifications; priority of guardian's nominee.** The court may appoint as guardian any person whose appointment would be in the best interests of the minor. The court shall appoint a person nominated by the minor, if the minor is fourteen (14) years of age or older, unless the court finds the appointment contrary to the best interests of the minor.

**Section 91A-5-207. Court appointment of guardian of minor; procedure.** (1) Notice of the time and place of hearing of a petition for the appointment of a guardian of a minor is to be given by the petitioner in the manner prescribed by section 91A-1-401 to:

- (a) the minor, if he is fourteen (14) or more years of age;
- (b) the person who has had the principal care and custody of the minor during the sixty (60) days preceding the date of the petition; and
- (c) any living parent of the minor.

(2) Upon hearing, if the court finds that a qualified person seeks appointment, venue is proper, the required notices have been given, the requirements of section 91A-5-204 have been met, and the welfare and best interests of the minor will be served by the requested appointment,

it shall make the appointment. In other cases the court may dismiss the proceedings, or make any other disposition of the matter that will best serve the interest of the minor.

(3) If necessary, the court may appoint a temporary guardian, with the status of an ordinary guardian of a minor, but the authority of a temporary guardian shall not last longer than six (6) months.

(4) If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the preference of the minor if the minor is fourteen (14) years of age or older.

**Section 91A-5-208. Consent to service by acceptance of appointment; notice.** By accepting a testamentary or court appointment as guardian, a guardian submits personally to the jurisdiction of the court in any proceeding relating to the guardianship that may be instituted by any interested person. Notice of any proceeding shall be delivered to the guardian, or mailed to him by ordinary mail at his address as listed in the court records and to his address as then known to the petitioner. Letters of guardianship must indicate whether the guardian was appointed by will or by court order.

**Section 91A-5-209. Powers and duties of guardian of minor.** A guardian of a minor has the powers and responsibilities of a parent who has not been deprived of custody of his minor and unemancipated child, except that a guardian is not legally obligated to provide from his own funds for the ward and is not liable to third persons by reason of the parental relationship for acts of the ward. In particular, and without qualifying the foregoing, a guardian has the following powers and duties:

(1) He must take reasonable care of his ward's personal effects and commence protective proceedings if necessary to protect other property of the ward.

(2) He may receive money payable for the support of the ward to the ward's parent, guardian or custodian under the terms of any statutory benefit or insurance system, or any private contract, devise, trust, conservatorship or custodianship. He also may receive money or property of the ward paid or delivered by virtue of section 91A-5-103. Any sums so received shall be applied to the ward's current needs for support, care and education. He must exercise due care to conserve any excess for the ward's future needs unless a conservator has been appointed for the estate of the ward, in which case excess shall be paid over at least annually to the conservator. Sums so received by the guardian are not to be used for compensation for his services except as approved by order of court or as determined by a duly appointed conservator other than the guardian. A guardian may institute proceedings to compel the performance by any person of a duty to support the ward or to pay sums for the welfare of the ward.

(3) The guardian is empowered to facilitate the ward's education, social, or other activities and to authorize medical or other professional care, treatment, or advice. A guardian is not liable by reason of this consent for injury to the ward resulting from the negligence or acts of third

persons unless it would have been illegal for a parent to have consented. A guardian may consent to the marriage or adoption of his ward.

(4) A guardian must report the condition of his ward and of the ward's estate which has been subject to his possession or control, as ordered by court on petition of any person interested in the minor's welfare or as required by court rule.

**Section 91A-5-210. Termination of appointment of guardian; general.** A guardian's authority and responsibility terminates upon the death, resignation or removal of the guardian or upon the minor's death, adoption, marriage or attainment of majority, but termination does not affect his liability for prior acts, nor his obligation to account for funds and assets of his ward. Resignation of a guardian does not terminate the guardianship until it has been approved by the court. A testamentary appointment under an informally probated will terminates if the will is later denied probate in a formal proceeding.

**Section 91A-5-211. Proceedings subsequent to appointment; venue.** (1) The court where the ward resides has concurrent jurisdiction with the court which appointed the guardian, or in which acceptance of a testamentary appointment was filed, over resignation, removal, accounting and other proceedings relating to the guardianship.

(2) If the court located where the ward resides is not the court in which acceptance of appointment is filed, the court in which proceedings subsequent to appointment are commenced shall in all appropriate cases notify the other court, in this or another state, and after consultation with that court determine whether to retain jurisdiction or transfer the proceedings to the other court, whichever is in the best interest of the ward. A copy of any order accepting a resignation or removing a guardian shall be sent to the court in which acceptance of appointment is filed.

**Section 91A-5-212. Resignation or removal proceedings.** (1) Any person interested in the welfare of a ward, or the ward, if fourteen (14) or more years of age, may petition for removal of a guardian on the ground that removal would be in the best interest of the ward. A guardian may petition for permission to resign. A petition for removal or for permission to resign may, but need not, include a request for appointment of a successor guardian.

(2) After notice and hearing on a petition for removal or for permission to resign, the court may terminate the guardianship and make any further order that may be appropriate.

(3) If, at any time in the proceeding, the court determines that the interests of the ward are, or may be, inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the preference of the minor if the minor is fourteen (14) or more years of age.

#### GUARDIANS OF INCAPACITATED PERSONS

**Section 91A-5-301. Testamentary appointment of guardian for incapacitated person.** (1) The parent of an incapacitated person may by will appoint a guardian of the incapacitated person. A testamentary

appointment by a parent becomes effective when, after having given seven (7) days prior written notice of his intention to do so to the incapacitated person and to the person having his care or to his nearest adult relative, the guardian files acceptance of appointment in the court in which the will is informally or formally probated, if prior thereto, both parents are dead or the surviving parent is adjudged incapacitated. If both parents are dead, an effective appointment by the parent who died later has priority unless it is terminated by the denial of probate in formal proceedings.

(2) The spouse of a married incapacitated person may by will appoint a guardian of the incapacitated person. The appointment becomes effective when, after having given seven (7) days prior written notice of his intention to do so to the incapacitated person and to the person having his care or to his nearest adult relative, the guardian files acceptance of appointment in the court in which the will is informally or formally probated. An effective appointment by a spouse has priority over an appointment by a parent unless it is terminated by the denial of probate in formal proceedings.

(3) This state shall recognize a testamentary appointment effected by filing acceptance under a will probated at the testator's domicile in another state.

(4) On the filing with the court in which the will was probated of written objection to the appointment by the person for whom a testamentary appointment of guardian has been made, the appointment is terminated. An objection does not prevent appointment by the court in a proper proceeding of the testamentary nominee or any other suitable person upon an adjudication of incapacity in proceedings under the sections 91A-5-302 through 91A-5-313, inclusive.

Section 91A-5-302. **Venue.** The venue for guardianship proceedings for an incapacitated person is in the place where the incapacitated person resides or is present. If the incapacitated person is admitted to an institution pursuant to order of a court of competent jurisdiction, venue is also in the county in which that court sits.

Section 91A-5-303. **Procedure for court appointment of a guardian of an incapacitated person.** (1) The incapacitated person or any person interested in his welfare may petition for a finding of incapacity and appointment of a guardian.

(2) Upon the filing of a petition, the court shall set a date for hearing on the issues of incapacity and unless the allegedly incapacitated person has counsel of his own choice, it shall appoint an appropriate official or attorney to represent him in the proceeding, who shall have the powers and duties of a guardian ad litem. The person alleged to be incapacitated shall be examined by a physician appointed by the court who shall submit his report in writing to the court and be interviewed by a visitor sent by the court. The visitor also shall interview the person seeking appointment as guardian, and visit the present place of abode of the person alleged to be incapacitated and the place it is proposed that he will be detained or reside if the requested appointment is made and submit his report in writing to the court. The person alleged to be incapacitated is

entitled to be present at the hearing in person, and to see or hear all evidence bearing upon his condition. He is entitled to be present by counsel, to present evidence, to cross-examine witnesses, including the court-appointed physician and the visitor, and to trial by jury. The issue may be determined at a closed hearing without a jury if the person alleged to be incapacitated or his counsel so requests.

**Section 91A-5-304. Findings; order of appointment.** The court may appoint a guardian as requested if it is satisfied that the person for whom a guardian is sought is incapacitated and that the appointment is necessary or desirable as a means of providing continuing care and supervision of the person of the incapacitated person. Alternatively, the court may dismiss the proceeding or enter any other appropriate order.

**Section 91A-5-305. Acceptance of appointment; consent to jurisdiction.** By accepting appointment, a guardian submits personally to the jurisdiction of the court in any proceeding relating to the guardianship that may be instituted by any interested person. Notice of any proceeding shall be delivered to the guardian or mailed to him by ordinary mail at his address as listed in the court records and to his address as then known to the petitioner.

**Section 91A-5-306. Termination of guardianship for incapacitated person.** The authority and responsibility of a guardian for an incapacitated person terminates upon the death of the guardian or ward, the determination of incapacity of the guardian, or upon removal or resignation as provided in section 91A-5-307. Testamentary appointment under an informally probated will terminates if the will is later denied probate in a formal proceeding. Termination does not affect his liability for prior acts nor his obligation to account for funds and assets of his ward.

**Section 91A-5-307. Removal or resignation of guardian; termination of incapacity.** (1) On petition of the ward or any person interested in his welfare, the court may remove a guardian and appoint a successor if in the best interests of the ward. On petition of the guardian, the court may accept his resignation and make any other order which may be appropriate.

(2) An order adjudicating incapacity may specify a minimum period, not exceeding one year, during which no petition for an adjudication that the ward is no longer incapacitated may be filed without special leave. Subject to this restriction, the ward or any person interested in his welfare may petition for an order that he is no longer incapacitated, and for removal or resignation of the guardian. A request for this order may be made by informal letter to the court or judge and any person who knowingly interferes with transmission of this kind of request to the court or judge may be adjudged guilty of contempt of court.

(3) Before removing a guardian, accepting the resignation of a guardian, or ordering that a ward's incapacity has terminated, the court, following the same procedures to safeguard the rights of the ward as apply to a petition for appointment of a guardian, may send a visitor to the residence of the present guardian and to the place where the ward resides or is detained, to observe conditions and report in writing to the court.

**Section 91A-5-308. Visitor in guardianship proceedings.** A visitor is, with respect to guardianship proceedings, a person who is trained in law, nursing or social work and is an officer, employee or special appointee of the court with no personal interest in the proceedings.

**Section 91A-5-309. Notices in guardianship proceedings.** (1) In a proceeding for the appointment or removal of a guardian of an incapacitated person other than the appointment of a temporary guardian or temporary suspension of a guardian, notice of hearing shall be given to each of the following:

(a) the ward or the person alleged to be incapacitated and his spouse, parents and adult children;

(b) any person who is serving as his guardian, conservator or who has his care and custody; and

(c) in case no other person is notified under (a), at least one (1) of his closest adult relatives, if any can be found.

(2) Notice shall be served personally on the alleged incapacitated person, and his spouse and parents if they can be found within the state. Notice to the spouse and parents, if they cannot be found within the state, and to all other persons except the alleged incapacitated person shall be given as provided in section 91A-1-401. Waiver of notice by the person alleged to be incapacitated is not effective unless he attends the hearing or his waiver of notice is confirmed in an interview with the visitor. Representation of the alleged incapacitated person by a guardian ad litem is not necessary.

**Section 91A-5-310. Temporary guardians.** If an incapacitated person has no guardian and an emergency exists, the court may exercise the power of a guardian pending notice and hearing. If an appointed guardian is not effectively performing his duties and the court further finds that the welfare of the incapacitated person requires immediate action, it may, with or without notice, appoint a temporary guardian for the incapacitated person for a specified period not to exceed six (6) months. A temporary guardian is entitled to the care and custody of the ward and the authority of any permanent guardian previously appointed by the court is suspended so long as a temporary guardian has authority. A temporary guardian may be removed at any time. A temporary guardian shall make any report the court requires. In other respects the provisions of this code concerning guardians apply to temporary guardians.

**Section 91A-5-311. Who may be guardian; priorities.** (1) Any competent person or a suitable institution may be appointed guardian of an incapacitated person.

(2) Persons who are not disqualified have priority for appointment as guardian in the following order:

(a) the spouse of the incapacitated person;

(b) an adult child of the incapacitated person;

(c) a parent of the incapacitated person, including a person nominated by will or other writing signed by a deceased parent;



(d) any relative of the incapacitated person with whom he has resided for more than six (6) months prior to the filing of the petition;

(e) a person nominated by the person who is caring for him or paying benefits to him.

**Section 91A-5-312. General powers and duties of guardian.** (1) A guardian of an incapacitated person has the same powers, rights and duties respecting his ward that a parent has respecting his unemancipated minor child except that a guardian is not liable to third persons for acts of the ward solely by reason of the parental relationship. In particular, and without qualifying the foregoing, a guardian has the following powers and duties, except as modified by order of the court:

(a) to the extent that it is consistent with the terms of any order by a court of competent jurisdiction relating to detention or commitment of the ward, he is entitled to custody of the person of his ward and may establish the ward's place of abode within or without this state.

(b) If entitled to custody of his ward he shall make provision for the care, comfort and maintenance of his ward and, whenever appropriate, arrange for his training and education. Without regard to custodial rights of the ward's person, he shall take reasonable care of his ward's clothing, furniture, vehicles and other personal effects and commence protective proceedings if other property of his ward is in need of protection.

(c) A guardian may give any consents or approvals that may be necessary to enable the ward to receive medical or other professional care, counsel, treatment or service.

(d) If no conservator for the estate of the ward has been appointed, he may:

(i) institute proceedings to compel any person under a duty to support the ward or to pay sums for the welfare of the ward to perform his duty;

(ii) receive money and tangible property deliverable to the ward and apply the money and property for support, care and education of the ward; but, he may not use funds from his ward's estate for room and board which he, his spouse, parent, or child have furnished the ward unless a charge for the service is approved by order of the court made upon notice to at least one (1) of the next of kin of the incompetent ward, if notice is possible. He must exercise care to conserve any excess for the ward's needs.

(e) A guardian is required to report the condition of his ward and of the estate which has been subject to his possession or control, as required by the court or court rule.

(f) If a conservator has been appointed, all of the ward's estate received by the guardian in excess of those funds expended to meet current expenses for support, care, and education of the ward must be paid to the conservator for management as provided in this code, and the guardian must account to the conservator for funds expended.

(2) Any guardian of one for whom a conservator also has been appointed shall control the custody and care of the ward, and is entitled

to receive reasonable sums for his services and for room and board furnished to the ward as agreed upon between him and the conservator, provided the amounts agreed upon are reasonable under the circumstances. The guardian may request the conservator to expend the ward's estate by payment to third persons or institutions for the ward's care and maintenance.

**Section 91A-5-313. Proceedings subsequent to appointment; venue.** (1) The court where the ward resides has concurrent jurisdiction with the court which appointed the guardian, or in which acceptance of a testamentary appointment was filed, over resignation, removal, accounting and other proceedings relating to the guardianship.

(2) If the court located where the ward resides is not the court in which acceptance of appointment is filed, the court in which proceedings subsequent to appointment are commenced shall in all appropriate cases notify the other court, in this or another state, and after consultation with that court determine whether to retain jurisdiction or transfer the proceedings to the other court, whichever may be in the best interest of the ward. A copy of any order accepting a resignation or removing a guardian shall be sent to the court in which acceptance of appointment is filed.

#### PROTECTION OF PROPERTY OF PERSONS UNDER DISABILITY AND MINORS

**Section 91A-5-401. Protective proceedings.** Upon petition and after notice and hearing in accordance with the provisions of this part, the court may appoint a conservator or make other protective order for cause as follows:

(1) Appointment of a conservator or other protective order may be made in relation to the estate and affairs of a minor if the court determines that a minor owns money or property that requires management or protection which cannot otherwise be provided, has or may have business affairs which may be jeopardized or prevented by his minority, or that funds are needed for his support and education and that protection is necessary or desirable to obtain or provide funds.

(2) Appointment of a conservator or other protective order may be made in relation to the estate and affairs of a person if the court determines that

(a) the person is unable to manage his property and affairs effectively for reasons such as mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power, or disappearance; and

(b) the person has property which will be wasted or dissipated unless proper management is provided, or that funds are needed for the support, care and welfare of the person or those entitled to be supported by him and that protection is necessary or desirable to obtain or provide funds.

**Section 91A-5-402. Protective proceedings; jurisdiction of affairs of protected persons.** After the service of notice in a proceeding seeking the appointment of a conservator or other protective order and until termination of the proceeding, the court in which the petition is filed has:

(1) exclusive jurisdiction to determine the need for a conservator or other protective order until the proceedings are terminated;

(2) exclusive jurisdiction to determine how the estate of the protected person which is subject to the laws of this state shall be managed, expended or distributed to or for the use of the protected person or any of his dependents;

(3) concurrent jurisdiction to determine the validity of claims against the person or estate of the protected person and his title to any property or claim.

Section 91A-5-403. **Venue.** Venue for proceedings under this part is:

(1) in the place in this state where the person to be protected resides whether or not a guardian has been appointed in another place; or

(2) if the person to be protected does not reside in this state, in any place where he has property.

Section 91A-5-404. **Original petition for appointment or protective order.** (1) The person to be protected, any person who is interested in his estate, affairs or welfare including his parent, guardian, or custodian, or any person who would be adversely affected by lack of effective management of his property and affairs may petition for the appointment of a conservator or for other appropriate protective order.

(2) The petition shall set forth to the extent known, the interest of the petitioner; the name, age, residence and address of the person to be protected; the name and address of his guardian, if any; the name and address of his nearest relative known to the petitioner; a general statement of his property with an estimate of the value thereof, including any compensation, insurance, pension or allowance to which he is entitled; and the reason why appointment of a conservator or other protective order is necessary. If the appointment of a conservator is requested, the petition also shall set forth the name and address of the person whose appointment is sought and the basis of his priority for appointment.

Section 91A-5-405. **Notice.** (1) On a petition for appointment of a conservator or other protective order, the person to be protected and his spouse or, if none, his parents, must be served personally with notice of the proceeding at least fourteen (14) days before the date of hearing if they can be found within the state, or, if they cannot be found within the state, they must be given notice in accordance with section 91A-1-401. Waiver by the person to be protected is not effective unless he attends the hearing or, unless minority is the reason for the proceeding, waiver is confirmed in an interview with the visitor.

(2) Notice of a petition for appointment of a conservator or other initial protective order, and of any subsequent hearing, must be given to any person who has filed a request for notice under section 91A-5-406 and to interested persons and other persons as the court may direct. Except as otherwise provided in (1), notice shall be given in accordance with section 91A-1-401.

Section 91A-5-406. **Protective proceedings; request for notice;**

**interested person.** Any interested person who desires to be notified before any order is made in a protective proceeding may file with the clerk a request for notice subsequent to payment of any fee required by statute or court rule. The clerk shall mail a copy of the demand to the conservator if one has been appointed. A request is not effective unless it contains a statement showing the interest of the person making it and his address, or that of his attorney, and is effective only as to matters occurring after the filing. Any governmental agency paying or planning to pay benefits to the person to be protected is an interested person in protective proceedings.

**Section 91A-5-407. Procedure concerning hearing and order on original petition.** (1) Upon receipt of a petition for appointment of a conservator or other protective order because of minority, the court shall set a date for hearing on the matters alleged in the petition. If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the choice of the minor if fourteen (14) years of age or older. A lawyer appointed by the court to represent a minor has the powers and duties of a guardian ad litem.

(2) Upon receipt of a petition for appointment of a conservator or other protective order for reasons other than minority, the court shall set a date for hearing.

Unless the person to be protected has counsel of his own choice, the court must appoint a lawyer to represent him who then has the powers and duties of a guardian ad litem. If the alleged disability is mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, or chronic intoxication, the court may direct that the person to be protected be examined by a physician designated by the court, preferably a physician who is not connected with any institution in which the person is a patient or is detained. The court may send a visitor to interview the person to be protected. The visitor may be a guardian ad litem or an officer or employee of the court.

(3) After hearing, upon finding that a basis for the appointment of a conservator or other protective order has been established, the court shall make an appointment or other appropriate protective order.

**Section 91A-5-408. Permissible court orders.** The court has the following powers which may be exercised directly or through a conservator in respect to the estate and affairs of protected persons:

(1) While a petition for appointment of a conservator or other protective order is pending and after preliminary hearing and without notice to others, the court has power to preserve and apply the property of the person to be protected as may be required for his benefit or the benefit of his dependents.

(2) After hearing and upon determining that a basis for an appointment or other protective order exists with respect to a minor without other disability, the court has all those powers over the estate and affairs of the minor which are or might be necessary for the best interests of the minor, his family and members of his household.

(3) After hearing and upon determining that a basis for an appointment or other protective order exists with respect to a person for reasons other than minority, the court has, for the benefit of the person and members of his household, all the powers over his estate and affairs which he could exercise if present and not under disability, except the power to make a will. These powers include, but are not limited to, power to make gifts, to convey or release his contingent and expectant interests in property including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entirety, to exercise or release his powers as trustee, personal representative, custodian for minors, conservator, or donee of a power of appointment, to enter into contracts, to create revocable or irrevocable trusts of property of the estate which may extend beyond his disability or life, to exercise options of the disabled person to purchase securities or other property, to exercise his rights to elect options and change beneficiaries under insurance and annuity policies and to surrender the policies for their cash value, to exercise his right to an elective share in the estate of his deceased spouse and to renounce any interest by testate or intestate succession or by inter vivos transfer.

(4) The court may exercise or direct the exercise of, its authority to exercise or release powers of appointment of which the protected person is donee, to renounce interests, to make gifts in trust or otherwise exceeding twenty percent (20%) of any year's income of the estate or to change beneficiaries under insurance and annuity policies, only if satisfied, after notice and hearing, that it is in the best interests of the protected person, and that he either is incapable of consenting or has consented to the proposed exercise of power.

(5) An order made pursuant to this section determining that a basis for appointment of a conservator or other protective order exists, has no effect on the capacity of the protected person.

**Section 91A-5-409. Protective arrangements and single transactions authorized.** (1) If it is established in a proper proceeding that a basis exists as described in section 91A-5-401 for affecting the property and affairs of a person the court, without appointing a conservator, may authorize, direct or ratify any transaction necessary or desirable to achieve any security, service, or care arrangement meeting the foreseeable needs of the protected person. Protective arrangements include, but are not limited to, payment, delivery, deposit or retention of funds or property, sale, mortgage, lease or other transfer of property, entry into an annuity contract, a contract for life care, a deposit contract, a contract for training and education, or addition to or establishment of a suitable trust.

(2) When it has been established in a proper proceeding that a basis exists as described in section 91A-5-401 for affecting the property and affairs of a person the court, without appointing a conservator, may authorize, direct or ratify any contract, trust or other transaction relating to the protected person's financial affairs or involving his estate if the court determines that the transaction is in the best interests of the protected person.

(3) Before approving a protective arrangement or other transaction

under this section, the court shall consider the interests of creditors and dependents of the protected person and, in view of his disability, whether the protected person needs the continuing protection of a conservator. The court may appoint a special conservator to assist in the accomplishment of any protective arrangement or other transaction authorized under this section who shall have the authority conferred by the order and serve until discharged by order after report to the court of all matters done pursuant to the order of appointment.

**Section 91A-5-410. Who may be appointed conservator; priorities.**

(1) The court may appoint an individual, or a corporation with general power to serve as trustee, as conservator of the estate of a protected person. The following are entitled to consideration for appointment in the order listed:

(a) a conservator, guardian of property or other like fiduciary appointed or recognized by the appropriate court of any other jurisdiction in which the protected person resides;

(b) an individual or corporation nominated by the protected person if he is fourteen (14) or more years of age and has, in the opinion of the court, sufficient mental capacity to make an intelligent choice;

(c) the spouse of the protected person;

(d) an adult child of the protected person;

(e) a parent of the protected person, or a person nominated by the will of a deceased parent;

(f) any relative of the protected person with whom he has resided for more than six (6) months prior to the filing of the petition;

(g) a person nominated by the person who is caring for him or paying benefits to him.

(2) A person in priorities (a), (c), (d), (e), or (f) may nominate in writing a person to serve in his stead. With respect to persons having equal priority, the court is to select the one who is best qualified of those willing to serve. The court, for good cause, may pass over a person having priority and appoint a person having less priority or no priority.

**Section 91A-5-411. Bond.** The court may require a conservator to furnish a bond conditioned upon faithful discharge of all duties of the trust according to law, with sureties as it shall specify. Unless otherwise directed, the bond shall be in the amount of the aggregate capital value of the property of the estate in his control plus one (1) year's estimated income minus the value of securities deposited under arrangements requiring an order of the court for their removal and the value of any land which the fiduciary, by express limitation of power, lacks power to sell or convey without court authorization. The court in lieu of sureties on a bond, may accept other security for the performance of the bond, including a pledge of securities or a mortgage of land.

**Section 91A-5-412. Terms and requirements of bond.** (1) The following requirements and provisions apply to any bond required under section 91A-5-411:

(a) unless otherwise provided by the terms of the approved bond, sureties are jointly and severally liable with the conservator and with each other;

(b) by executing an approved bond of a conservator, the surety consents to the jurisdiction of the court which issued letters to the primary obligor in any proceeding pertaining to the fiduciary duties of the conservator and naming the surety as a party defendant. Notice of any proceeding shall be delivered to the surety or mailed to him by registered or certified mail at his address as listed with the court where the bond is filed and to his address as then known to the petitioner;

(c) on petition of a successor conservator or any interested person, a proceeding may be initiated against a surety for breach of the obligation of the bond of the conservator;

(d) the bond of the conservator is not void after the first recovery but may be proceeded against from time to time until the whole penalty is exhausted.

(2) No proceeding may be commenced against the surety on any matter as to which an action or proceeding against the primary obligor is barred by adjudication or limitation.

**Section 91A-5-413. Acceptance of appointment; consent to jurisdiction.** By accepting appointment, a conservator submits personally to the jurisdiction of the court in any proceeding relating to the estate that may be instituted by any interested person. Notice of any proceeding shall be delivered to the conservator, or mailed to him by registered or certified mail at his address as listed in the petition for appointment or as thereafter reported to the court and to his address as then known to the petitioner.

**Section 91A-5-414. Compensation and expenses.** If not otherwise compensated for services rendered, any visitor, lawyer, physician, conservator or special conservator appointed in a protective proceeding is entitled to reasonable compensation from the estate.

**Section 91A-5-415. Death, resignation or removal of conservator.** The court may remove a conservator for good cause, upon notice and hearing, or accept the resignation of a conservator. A conservator so appointed succeeds to the title and powers of his predecessor.

**Section 91A-5-416. Petitions for orders subsequent to appointment.** (1) Any person interested in the welfare of a person for whom a conservator has been appointed may file a petition in the appointing court for an order

(a) requiring bond or security or additional bond or security, or reducing bond,

(b) requiring an accounting for the administration of the trust,

(c) directing distribution,

(d) removing the conservator and appointing a temporary or successor conservator, or

(e) granting other appropriate relief.

(2) A conservator may petition the appointing court for instructions concerning his fiduciary responsibility.

(3) Upon notice and hearing, the court may give appropriate instructions or make any appropriate order.

(4) For purposes of this section, any person, institution or agency which is furnishing or supplying any money for support or care of a person for whom a conservator has been appointed is a person interested in the welfare of such protected person.

**Section 91A-5-417. Conservator to act as fiduciary.** In the exercise of his powers, a conservator is to act as a fiduciary and shall observe the standards of care applicable to trustees.

**Section 91A-5-418. Inventory and records.** Within ninety (90) days after his appointment, every conservator shall prepare and file with the appointing court a complete inventory of the estate of the protected person together with his oath or affirmation that it is complete and accurate so far as he is informed. The conservator shall provide a copy thereof to the protected person if he can be located, has attained the age of fourteen (14) years, and has sufficient mental capacity to understand these matters, and to any parent or guardian with whom the protected person resides. The conservator shall keep suitable records of his administration and exhibit the same on request of any interested person.

**Section 91A-5-419. Accounts.** Every conservator must account to the court for his administration of the trust upon his resignation or removal, and at other times as the court may direct. On termination of the protected person's minority or disability, a conservator may account to the court, or he may account to the former protected person or his personal representative. Subject to appeal or vacation within the time permitted, an order, made upon notice and hearing, allowing an intermediate account of a conservator, adjudicates as to his liabilities concerning the matters considered in connection therewith; and an order, made upon notice and hearing, allowing a final account adjudicates as to all previously unsettled liabilities of the conservator to the protected person or his successors relating to the conservatorship. In connection with any account, the court may require a conservator to submit to a physical check of the estate in his control, to be made in any manner the court may specify.

**Section 91A-5-420. Conservators; title by appointment.** The appointment of a conservator vests in his title as trustee to all property of the protected person, presently held or thereafter acquired, including title to any property theretofore held for the protected person by custodians or attorneys in fact. The appointment of a conservator is not a transfer or alienation within the meaning of general provisions of any federal or state statute or regulation, insurance policy, pension plan, contract, will or trust instrument, imposing restrictions upon or penalties for transfer or alienation by the protected person of his rights or interest, but this section does not restrict the ability of persons to make specific provision by contract or dispositive instrument relating to a conservator.

**Section 91A-5-421. Recording conservator's letters.** Letters of conservatorship are evidence of transfer of all assets of a protected person



to the conservator. An order terminating a conservatorship is evidence of transfer of all assets of the estate from the conservator to the protected person, or his successors. Subject to the requirements of general statutes governing the filing or recordation of documents of title to land or other property, letters of conservatorship, and orders terminating conservatorships, may be filed or recorded to give record notice of title as between the conservator and the protected person.

**Section 91A-5-422. Sale, encumbrance or transaction involving conflict of interest; voidable; exceptions.** Any sale or encumbrance to a conservator, his spouse, agent or attorney, or any corporation or trust in which he has a substantial beneficial interest, or any transaction which is affected by a substantial conflict of interest is voidable unless the transaction is approved by the court after notice to interested persons and others as directed by the court.

**Section 91A-5-423. Persons dealing with conservators; protection.** A person who in good faith either assists a conservator or deals with him for value in any transaction other than those requiring a court order as provided in section 91A-5-408, is protected as if the conservator properly exercised the power. The fact that a person knowingly deals with a conservator does not alone require the person to inquire into the existence of a power or the propriety of its exercise, except that restrictions on powers of conservators which are endorsed on letters as provided in section 91A-5-426 are effective as to third persons. A person is not bound to see to the proper application of estate assets paid or delivered to a conservator. The protection here expressed extends to instances in which some procedural irregularity or jurisdictional defect occurred in proceedings leading to the issuance of letters. The protection here expressed is not by substitution for that provided by comparable provisions of the laws relating to commercial transactions and laws simplifying transfers of securities by fiduciaries.

**Section 91A-5-424. Powers of conservator in administration.** (1) A conservator has all of the powers conferred herein and any additional powers conferred by law on trustees in this state. In addition, a conservator of the estate of an unmarried minor under the age of eighteen (18) years, as to whom no one has parental rights, has the duties and powers of a guardian of a minor described in section 91A-5-209 until the minor attains the age of eighteen (18) or marries, but the parental rights so conferred on a conservator do not preclude appointment of a guardian as provided by sections 91A-5-201 through 91A-5-212, inclusive.

(2) A conservator has power without court authorization or confirmation, to invest and reinvest funds of the estate as would a trustee.

(3) A conservator, acting reasonably in efforts to accomplish the purpose for which he was appointed, may act without court authorization or confirmation, to

(a) collect, hold and retain assets of the estate including land in another state, until, in his judgment, disposition of the assets should be made, and the assets may be retained even though they include an asset in which he is personally interested;

(b) receive additions to the estate;

(c) continue or participate in the operation of any business or other enterprise;

(d) acquire an undivided interest in an estate asset in which the conservator, in any fiduciary capacity, holds an undivided interest;

(e) invest and reinvest estate assets in accordance with subsection (2);

(f) deposit estate funds in a bank including a bank operated by the conservator;

(g) acquire or dispose of an estate asset including land in another state for cash or on credit, at public or private sale; and to manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset;

(h) make ordinary or extraordinary repairs or alterations in buildings or other structures, to demolish any improvements, to raze existing or erect new party walls or buildings;

(i) subdivide, develop, or dedicate land to public use; to make or obtain the vacation of plats and adjust boundaries; to adjust differences in valuation on exchange or to partition by giving or receiving considerations; and to dedicate easements to public use without consideration;

(j) enter for any purpose into a lease as lessor or lessee with or without option to purchase or renew for a term within or extending beyond the term of the conservatorship;

(k) enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;

(l) grant an option involving disposition of an estate asset, to take an option for the acquisition of any asset;

(m) vote a security, in person or by general or limited proxy;

(n) pay calls, assessments, and any other sums chargeable or accruing against or on account of securities;

(o) sell or exercise stock subscription or conversion rights; to consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;

(p) hold a security in the name of a nominee or in other form without disclosure of the conservatorship so that title to the security may pass by delivery, but the conservator is liable for any act of the nominee in connection with the stock so held;

(q) insure the assets of the estate against damage or loss, and the conservator against liability with respect to third persons;

(r) borrow money to be repaid from estate assets or otherwise; to advance money for the protection of the estate or the protected person, and for all expenses, losses, and liability sustained in the administration of the estate or because of the holding or ownership of any estate assets

and the conservator has a lien on the estate as against the protected person for advances so made;

(s) pay or contest any claim; to settle a claim by or against the estate or the protected person by compromise, arbitration, or otherwise; and to release, in whole or in part, any claim belonging to the estate to the extent that the claim is uncollectible;

(t) pay taxes, assessments, compensation of the conservator, and other expenses incurred in the collection, care, administration and protection of the estate;

(u) allocate items of income or expense to either estate income or principal, as provided by law, including creation of reserves out of income for depreciation, obsolescence, or amortization, or for depletion in mineral or timber properties;

(v) pay any sum distributable to a protected person or a dependent of the person who is a minor or incompetent, without liability to the conservator, by paying the sum to the distributee or by paying the sum for the use of the distributee either to his guardian or if none, to a relative or other person with custody of his person;

(w) employ persons, including attorneys, auditors, investment advisors, or agents, even though they are associated with the conservator to advise or assist him in the performance of his administrative duties; to act upon their recommendation without independent investigation; and instead of acting personally, to employ one (1) or more agents to perform any act of administration, whether or not discretionary;

(x) prosecute or defend actions, claims or proceedings in any jurisdiction for the protection of estate assets and of the conservator in the performance of his duties; and

(y) execute and deliver all instruments which will accomplish or facilitate the exercise of the powers vested in the conservator.

**Section 91A-5-425. Distributive powers and duties of conservator.**

(1) A conservator may expend or distribute income or principal of the estate without court authorization or confirmation for the support, education, care or benefit of the protected person and his dependents in accordance with the following principles:

(a) The conservator is to consider recommendations relating to the appropriate standard of support, education and benefit for the protected person made by a parent or guardian, if any. He may not be surcharged for sums paid to persons or organizations actually furnishing support, education or care to the protected person pursuant to the recommendations of a parent or guardian of the protected person unless he knows that the parent or guardian is deriving personal financial benefit therefrom, including relief from any personal duty of support, or unless the recommendations are clearly not in the best interests of the protected person.

(b) The conservator is to expend or distribute sums reasonably necessary for the support, education, care or benefit of the protected person with due regard to

(i) the size of the estate, the probable duration of the conservatorship and the likelihood that the protected person, at some future time, may be fully able to manage his affairs and the estate which has been conserved for him;

(ii) the accustomed standard of living of the protected person and members of his household;

(iii) other funds or sources used for the support of the protected person.

(c) The conservator may expend funds of the estate for the support of persons legally dependent on the protected person and others who are members of the protected person's household who are unable to support themselves, and who are in need of support.

(d) Funds expended under this subsection may be paid by the conservator to any person, including the protected person to reimburse for expenditures which the conservator might have made, or in advance for services to be rendered to the protected person when it is reasonable to expect that they will be performed and where advance payments are customary or reasonably necessary under the circumstances.

(2) If the estate is ample to provide for the purposes implicit in the distributions authorized by the preceding subsections, a conservator for a protected person other than a minor has power to make gifts to charity and other objects as the protected person might have been expected to make in amounts which do not exceed in total for any year twenty percent (20%) of the income from the estate.

(3) When a minor who has not been adjudged disabled under section 91A-5-401(2) attains his majority, his conservator, after meeting all prior claims and expenses of administration, shall pay over and distribute all funds and properties to the former protected person as soon as possible.

(4) When the conservator is satisfied that a protected person's disability (other than minority) has ceased, the conservator, after meeting all prior claims and expenses of administration, shall pay over and distribute all funds and properties to the former protected person as soon as possible.

(5) If a protected person dies, the conservator shall deliver to the court for safekeeping any will of the deceased protected person which may have come into his possession, inform the executor or a beneficiary named therein that he has done so, and retain the estate for delivery to a duly appointed personal representative of the decedent or other persons entitled thereto. If after forty (40) days from the death of the protected person no other person has been appointed personal representative and no application or petition for appointment is before the court, the conservator may apply to exercise the powers and duties of a personal representative so that he may proceed to administer and distribute the decedent's estate without additional or further appointment. Upon application for an order granting the powers of a personal representative to a conservator, after notice to any person demanding notice under section 91A-3-204 and to any person nominated executor in any will of which the applicant is aware, the court may order the conferral of the power upon determining that there is no objection, and endorse the letters of the conservator to

note that the formerly protected person is deceased and that the conservator has acquired all of the powers and duties of a personal representative. The making and entry of an order under this section shall have the effect of an order of appointment of a personal representative as provided in section 91A-3-308 and sections 91A-3-601 through 91A-3-1010, inclusive, except that estate in the name of the conservator, after administration, may be distributed to the decedent's successors without prior retransfer to the conservator as personal representative.

**Section 91A-5-426. Enlargement or limitation of powers of conservator.** Subject to the restrictions in section 91A-5-408(4), the court may confer on a conservator at the time of appointment or later, in addition to the powers conferred on him by sections 91A-5-424 and 91A-5-425, any power which the court itself could exercise under sections 91A-5-408(2) and 91A-5-408(3). The court may, at the time of appointment or later, limit the powers of a conservator conferred by the court, and may at any time relieve him of any limitation. If the court limits any power conferred on the conservator by section 91A-5-424 or section 91A-5-425, the limitation shall be endorsed upon his letters of appointment.

**Section 91A-5-427. Preservation of estate plan.** In investing the estate, and in selecting assets of the estate for distribution under subsections (1) and (2) of section 91A-5-425, in utilizing powers of revocation or withdrawal available for the support of the protected person, and exercisable by the conservator or the court, the conservator and the court should take into account any known estate plan of the protected person, including his will, any revocable trust of which he is settlor, and any contract, transfer or joint ownership arrangement with provisions for payment or transfer of benefits or interests at his death to another or others which he may have originated. The conservator may examine the will of the protected person.

**Section 91A-5-428. Claims against protected person; enforcement.** (1) A conservator must pay from the estate all just claims against the estate and against the protected person arising before or after the conservatorship upon their presentation and allowance. A claim may be presented by either of the following methods:

(a) the claimant may deliver or mail to the conservator a written statement of the claim indicating its basis, the name and address of the claimant and the amount claimed;

(b) the claimant may file a written statement of the claim, in the form prescribed by rule, with the clerk of the court and deliver or mail a copy of the statement to the conservator.

A presented claim is allowed if it is not disallowed by written statement mailed by the conservator to the claimant within sixty (60) days after its presentation. A claim is deemed presented on the first to occur of receipt of the written statement of claim by the conservator, or the filing of the claim with the court. The presentation of a claim tolls any statute of limitation relating to the claim until thirty (30) days after its disallowance.

(2) A claimant whose claim has not been paid may petition the court for determination of his claim at any time before it is barred by the applicable statute of limitation, and, upon due proof, procure an order for its allowance and payment from the estate. If a proceeding is pending against a protected person at the time of appointment of a conservator or is initiated against the protected person thereafter, the moving party must give notice of the proceeding to the conservator if the outcome is to constitute a claim against the estate.

(3) If it appears that the estate in conservatorship is likely to be exhausted before all existing claims are paid, preference is to be given to prior claims for the care, maintenance and education of the protected person or his dependents and existing claims for expenses of administration.

**Section 91A-5-429. Individual liability of conservator.** (1) Unless otherwise provided in the contract, a conservator is not individually liable on a contract properly entered into in his fiduciary capacity in the course of administration of the estate unless he fails to reveal his representative capacity and identify the estate in the contract.

(2) The conservator is individually liable for obligations arising from ownership or control of property of the estate or for torts committed in the course of administration of the estate only if he is personally at fault.

(3) Claims based on contracts entered into by a conservator in his fiduciary capacity, on obligations arising from ownership or control of the estate, or on torts committed in the course of administration of the estate may be asserted against the estate by proceeding against the conservator in his fiduciary capacity, whether or not the conservator is individually liable therefor.

(4) Any question of liability between the estate and the conservator individually may be determined in a proceeding for accounting, surcharge, or indemnification, or other appropriate proceeding or action.

**Section 91A-5-430. Termination of conservatorship.** The protected person, his personal representative, the conservator or any other interested person may petition the court to terminate the conservatorship. A protected person seeking termination is entitled to the same rights and procedures as in an original proceeding for a protective order. The court, upon determining after notice and hearing that the minority or disability of the protected person has ceased, may terminate the conservatorship. Upon termination, title to assets of the estate passes to the former protected person or to his successors subject to provision in the order for expenses of administration or to conveyances from the conservator to the former protected persons or his successors, to evidence the transfer.

**Section 91A-5-431. Payment of debt and delivery of property to foreign conservator without local proceedings.** Any person indebted to a protected person, or having possession of property or of an instrument evidencing a debt, stock or chose in action belonging to a protected person may pay or deliver to a conservator, guardian of the estate or other like fiduciary appointed by a court of the state or residence of the protected person, upon being presented with proof of his appointment and an affidavit made by him or on his behalf stating:

(1) that no protective proceeding relating to the protected person is pending in this state; and

(2) that the foreign conservator is entitled to payment or to receive delivery.

If the person to whom the affidavit is presented is not aware of any protective proceeding pending in this state, payment or delivery in response to the demand and affidavit discharges the debtor or possessor.

### POWERS OF ATTORNEY

Section 91A-5-501. **When power of attorney not affected by disability.** Whenever a principal designates another his attorney in fact or agent by a power of attorney in writing and the writing contains the words "This power of attorney shall not be affected by disability of the principal," or "This power of attorney shall become effective upon the disability of the principal," or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding his disability, the authority of the attorney in fact or agent is exercisable by him as provided in the power on behalf of the principal notwithstanding later disability or incapacity of the principal at law or later uncertainty as to whether the principal is dead or alive. All acts done by the attorney in fact or agent pursuant to the power during any period of disability or incompetence or uncertainty as to whether the principal is dead or alive have the same effect and inure to the benefit of and bind the principal or his heirs, devisees and personal representative as if the principal were alive, competent and not disabled. If a conservator thereafter is appointed for the principal, the attorney in fact or agent, during the continuance of the appointment, shall account to the conservator rather than the principal. The conservator has the same power the principal would have had if he were not disabled or incompetent to revoke, suspend or terminate all or any part of the power of attorney or agency.

Section 91A-5-502. **Other powers of attorney not revoked until notice of death or disability.** (1) The death, disability, or incompetence of any principal who has executed a power of attorney in writing other than a power as described by section 91A-5-501, does not revoke or terminate the agency as to the attorney in fact, agent or other person who, without actual knowledge of the death, disability, or incompetence of the principal, acts in good faith under the power of attorney or agency. Any action so taken, unless otherwise invalid or unenforceable, binds the principal and his heirs, devisees, and personal representatives.

(2) An affidavit, executed by the attorney in fact or agent stating that he did not have, at the time of doing an act pursuant to the power of attorney, actual knowledge of the revocation or termination of the power of attorney by death, disability or incompetence, is, in the absence of fraud, conclusive proof of the nonrevocation or nontermination of the power at that time. If the exercise of the power requires execution and delivery of any instrument which is recordable, the affidavit when authenticated for record is likewise recordable.

(3) This section shall not be construed to alter or affect any provision for revocation or termination contained in the power of attorney.

## GENERAL PROVISIONS

**Section 91A-6-101. Provisions for payment or transfer at death.**

(1) Any of the following provisions in an insurance policy, contract of employment, bond, mortgage, promissory note, deposit agreement, pension plan, trust agreement, conveyance or any other written instrument effective as a contract, gift, conveyance, or trust is deemed to be nontestamentary, and this code does not invalidate the instrument or any provision:

(a) that money or other benefits theretofore due to, controlled or owned by a decedent shall be paid after his death to a person designated by the decedent in either the instrument or a separate writing, including a will, executed at the same time as the instrument or subsequently;

(b) that any money due or to become due under the instrument shall cease to be payable in event of the death of the promisee or the promisor before payment or demand; or

(c) that any property which is the subject of the instrument shall pass to a person designated by the decedent in either the instrument or a separate writing, including a will, executed at the same time as the instrument or subsequently.

(2) Nothing in this section limits the rights of creditors under other laws of this state.

**Section 2.** Sections 22-101 through 22-117, 91-101, 91-102, 91-107, 91-108, 91-113 through 91-116, 91-122, 91-125 through 91-130, 91-135 through 91-139, 91-141, 91-201, 91-210, 91-214 through 91-217, 91-227, 91-235, 91-301, 91-303, 91-304, 91-307, 91-308, 91-311 through 91-314, 91-317, 91-319, 91-321, 91-402 through 91-405, 91-411 through 91-418, 91-423 through 91-430, 91-520 through 91-522, 91-612A, 91-612B, 91-701, 91-702, 91-801 through 91-811, 91-901, 91-904, 91-1001 through 91-1003, 91-1101 through 91-1105, 91-1107, 91-1301 through 91-1303, 91-1305 through 91-1312, 91-1401, 91-1402, 91-1404 through 91-1406, 91-1501 through 91-1509, 91-1601 through 91-1604, 91-1701 through 91-1723, 91-1801 through 91-1807, 91-1901 through 91-1906, 91-2002 through 91-2004, 91-2101 through 91-2105, 91-2201 through 91-2204, 91-2207 through 91-2213, 91-2401 through 91-2407, 91-2501 through 91-2507, 91-2601 through 91-2612, 91-2701 through 91-2705, 91-2707 through 91-2712, 91-2715 through 91-2720, 91-2723, 91-2724, 91-2801 through 91-2810, 91-2901, 91-2902, 91-3001 through 91-3039, 91-3101 through 91-3109, 91-3201 through 91-3204, 91-3209 through 91-3212, 91-3301 through 91-3313, 91-3405, 91-3407, 91-3601 through 91-3608, 91-3701 through 91-3706, 91-3801 through 91-3803, 91-3901 through 91-3907, 91-4001 through 91-4012, 91-4101 through 91-4106, 91-4311, 91-4314 through 91-4316, 91-4321, 91-4322, 91-4501 through 91-4508, 91-4510 through 91-4518, 91-4522 through 91-4525, 91-4601 through 91-4604, 91-4606 through 91-4608, 91-4610, 91-4611, 91-4701 through 91-4706, 91-4801 through 91-4822, 91-4901 through 91-4904, 91-4906, 91-4907, 91-4909 through 91-4911, 91-5001 through 91-5007, 91-5101 through 91-5111, 91-5202, 91-5203, 91-5210, 91-5301 through 91-5312, and 93-1404.4, R.C.M. 1947, are repealed.

**Section 3.** There is a new section to be numbered 91A-6-102, R.C.M. 1947, which reads as follows:

**91A-6-102. Effective date.** (1) This code takes effect on July 1, 1975.



(2) Except as provided elsewhere in this code, on the effective date of this code:

(a) the code applies to any wills of decedents dying thereafter;

(b) the code applies to any proceedings in court then pending or thereafter commenced regardless of the time of the death of decedent except to the extent that in the opinion of the court the former procedure should be made applicable in a particular case in the interest of justice or because of infeasibility of application of the procedure of this code;

(c) every personal representative including a person administering an estate of a minor or incompetent holding an appointment on that date, continues to hold the appointment but has only the powers conferred by this code and is subject to the duties imposed with respect to any act occurring or done thereafter;

(d) an act done before the effective date in any proceeding and any accrued right is not impaired by this code. If a right is acquired, extinguished or barred upon the expiration of a prescribed period of time which has commenced to run by the provisions of any statute before the effective date, the provisions shall remain in force with respect to that right;

(e) any rule of construction or presumption provided in this code applies to instruments executed and multiple-party accounts opened before the effective date unless there is a clear indication of a contrary intent.

Section 4. There is hereby enacted a new section, to be placed in chapter 44, Title 91, R.C.M. 1947, reading as follows:

**91-4468. Personal representative to furnish information — department to determine tax — appeal.** The personal representative, or should the personal representative fail to do so, any interested person, shall make application to the state department of revenue for determination of any tax due upon the estate of a decedent. The applicant shall furnish to the department of revenue the inventory and appraisement required by section 91A-3-706 of this act and of any supplemental inventory under section 91A-3-707 of this act together with a statement, under oath or affirmation, of any property owned by the decedent at the time of his death situated outside of this state and without its jurisdiction, and, further, shall furnish the department with the final accounting of such personal representative as provided by section 91A-3-714 of this act. If the decedent died testate, the personal representative shall likewise furnish the department with a certified copy of the last will of the decedent. If the decedent died intestate, the personal representative shall provide the department with a sworn statement setting forth the names, ages, and residences of the heirs at law of decedent. In all cases, the personal representative shall set forth the proportion of the entire estate inherited by or devised to each of said persons, and the relation, if any, which each devisee, heir, or transferee sustained to the decedent or person from whom the transfer was made. The information so provided shall not be binding upon the department in case it believes the same to be erroneous or untrue. From the information so furnished the department and such other information as it may be able to obtain with reference thereto, the

department shall, with reasonable diligence, proceed to ascertain and determine the amount of tax, if any, due under the provisions of the inheritance tax laws of the state of Montana, and a copy of such determination shall be mailed to the personal representative and to the clerk of the appropriate district court. If no tax is due, the department shall likewise so inform the clerk of district court and the personal representative. Upon receipt of notice from the department of the amount of tax due or that no tax is due, the personal representative shall notify all persons having a beneficial interest in said estate as promptly as may be. Should the personal representative or any person affected by the determination of inheritance tax feel aggrieved by the department's determination, he may, within sixty (60) days after the filing of the copy of such determination with the clerk of district court, appeal the determination to the appropriate district court, by serving upon the department his objections to such determination and by filing such notice, after so serving the same, in the office of the clerk of such court. The court shall set a day for hearing such appeal upon ten (10) days' notice to all interested parties, and at the time and place set shall hear the appeal, upon all papers and records which may be properly presented before it, and shall as soon as possible thereafter issue its order determining the amount of such inheritance tax, if it finds a tax to be due.

Section 5. Section 91-4417, R.C.M. 1947, is amended to read as follows:

**"91-4417. Powers of representative in collection and payment of tax — collection from devisees.** Every *personal representative* shall have full power to sell so much of the property of the decedent as will enable him to pay such tax in the same manner as he might be entitled by law to do for the payment of the debts of the testator or intestate. Any such *personal representative*, having in charge or in trust any property for distribution, subject to such tax, shall deduct the tax therefrom; and within thirty days therefrom shall pay over the same to the county treasurer, as herein provided. If such property be not in money, he shall collect the tax thereon upon the appraised value thereof, from the person entitled thereto. He shall not deliver or be compelled to deliver any specific property subject to tax under this law, to any person until he shall have collected the tax thereon. If any such *devise* shall be charged upon or payable out of real property, the heir or devisee shall deduct such tax therefrom and pay it to the *personal representative*, and the tax shall remain a lien or charge on such real property for the period provided in section 91-4415, and the payment thereof shall be enforced by the *personal representative*, in the same manner that payment of the *devise* might be enforced, or by the attorney general under section 91-4440. If any such *devise* shall be given in money to any such person for a limited period, the *personal representative* shall retain the tax upon the whole amount, but if it be not in money, and *agreement as to apportionment cannot be reached by him with the devisee or devisees affected*, he shall make application to the *appropriate court* to make an apportionment if the case require it, of the sum to be paid into the hands of such *devisees*, and for such further order relative thereto as the case may require, *such application being treated as a supervised proceeding.*"

Section 6. Section 91-4423, R.C.M. 1947, is amended to read as follows:

"91-4423. **Jurisdiction of district court.** The district court of every county of the state having jurisdiction to grant letters testamentary or of administration upon the estate of a decedent whose property is chargeable with any tax under the inheritance tax laws, or to appoint a trustee of such estate or any part thereof, or to give ancillary letters thereon, shall have jurisdiction to hear and determine all questions arising under the provisions of the inheritance tax laws, and to do any act in relation thereto authorized by law to be done by a district court in other matters or proceedings coming within its jurisdiction; and if two or more district courts shall be entitled to exercise any such jurisdiction, the district court first acquiring jurisdiction hereunder, shall retain the same to the exclusion of every other district court."

Section 7. Section 91-4430, R.C.M. 1947, is amended to read as follows:

"91-4430. **Notice of hearing.** Notice of such hearing to determine the inheritance tax shall be given *in the manner and for the time provided in section 91A-1-401 of this act, to all interested persons and to the department of revenue.* A copy of the application for exclusion of any property to avoid inheritance tax thereon shall be given with notice of hearing thereof, and notice of any such hearing shall be mailed to the state department of revenue not less than fifteen (15) days before such hearing, upon notice forms provided by the department and containing such information as it may require."

Section 8. Section 91-4437, R.C.M. 1947, is amended to read as follows:

"91-4437. **Court order determining tax — contents.** *When the district court shall be required to make a determination of the value of any estate which is taxable under the inheritance tax laws, and of the tax to which it is liable, an order shall be entered by the court determining the same, which order shall include a statement of (a) the date of death of the decedent, (b) the gross value of the real and personal property of such estate, stating the principal items thereof, (c) the deductions therefrom allowed by the court, (d) the names and relationship of the persons entitled to receive the same, with the amount received by each, (e) the rates and amounts of inheritance tax for which each such person is liable, and the total amount of tax to be paid, (f) a statement of the amount of interest or penalty due, if any. Such order shall be substantially in the form prescribed by the state department of revenue. A copy of the same shall be delivered or mailed to the county treasurer, the administrator or executor, and the state department of revenue, and no final judgment shall be entered in such estates until due proof is filed with the court that such copies have been so delivered or mailed, and receipts are filed with such court showing the payment of all such taxes, or proof is filed showing that the bond authorized by section 91-4419 has been given.*"

Section 9. Section 91-4438, R.C.M. 1947, is amended to read as follows:

**"91-4438. Rehearing within sixty days.** *When an appraisal, assessment, or determination of tax is made by a district court the attorney general, state department of revenue, public administrator, county attorney, or any person dissatisfied with the appraisal or assessment and determination of such tax may apply for a rehearing thereof before the district court within sixty (60) days from the fixing, assessing and determination of the tax by the district court as herein provided on filing a written notice which shall state the grounds of the application for a rehearing. The rehearing shall be upon the records, proceedings, and proofs had and taken on the hearing as herein provided unless additional or newly discovered evidence be alleged therefor, and a new trial shall not be had or granted unless specially ordered by the district court."*

Section 10. Section 91-4448, R.C.M. 1947, is amended to read as follows:

**"91-4448. Forms and blanks.** The state department of revenue shall prescribe such forms and prepare such blanks as may be necessary in inheritance tax proceedings; and such blanks shall be printed at the expense of the state and furnished to *each* district court *or the clerk thereof* upon the request of the judge or clerk thereof."

Section 11. Section 91-4467, R.C.M. 1947, is amended to read as follows:

**"91-4467. Purpose of act — limitation on application.** The purpose of this act is to provide a simplified procedure of removing the inheritance tax lien which attaches upon the death of a grantor where the transfer is from husband to wife, or wife to husband, and where the total value of the real property so transferred does not exceed the value of *twenty-five thousand dollars (\$25,000)*, at the time of death; provided, however, this act shall not apply to other transfers of property under the Inheritance Tax Act."

Section 12. Section 91-4411, R.C.M. 1947, is amended to read as follows:

**"91-4411. Estate tax.** (a) In addition to the inheritance taxes hereinabove imposed, an estate tax is hereby imposed upon the transfer of the estate of every decedent leaving an estate which is subject to the federal estate tax imposed by the United States of America under the applicable provisions of the Internal Revenue Code and which has, in whole or in part, a taxable situs in this state. The tax hereby imposed upon the transfer of each such estate shall be equal to the maximum tax credit allowable for state death taxes against the federal estate tax imposed with respect to the portion of the decedent's estate having a taxable situs in this state, less the inheritance taxes, if any, due this state, it being the purpose and intent of this section to impose only such additional taxes hereunder as may be necessary to give this state the full benefit of the maximum tax credit allowable against the federal estate tax imposed with respect to a decedent's estate which has a taxable situs in this state. If only a portion of a decedent's estate has a taxable situs in this state, such maximum tax credit shall be determined by multiplying the entire amount of the credit allowable against the federal estate tax for state death taxes by

the percentage which the value of the portion of the decedent's estate which has a taxable situs in this state bears to the value of the entire estate. The tax imposed herein shall be collected by the several county treasurers or the department of revenue for deposit with the state treasurer and distributed as hereafter provided. For the purpose of this tax, the taxable situs of property shall be the same as the taxable situs for inheritance tax purposes.

(b) When payable. The estate tax shall be payable to the county treasurer of the county in which such estate is being probated at the same time, or times, at which the United States tax is payable and shall bear interest, if any, at the same rate and for the same period as such United States tax.

(c) Liability. Administrators, executors, trustees and grantees under a conveyance, made during the grantor's life and taxable hereunder, shall be liable for such taxes with interest, until the same have been paid.

(d) Lien. Said taxes and interest shall be, and remain, a lien on the property for a period of ten (10) years from the date of death, unless sooner paid.

(e) Extension of time. The district court of the county in which such estate is being probated may, for cause shown, extend the time of payment of said tax whenever the circumstances of the case require.

(f) Duplicate returns. It shall be the duty of the *personal* representative of the estate of any decedent, whose estate may be subject to the payment of a United States estate tax, to file duplicates of the United States estate tax returns with the district court of the county in which such estate is being probated *and with the department of revenue*. He shall also file with such court *and with the department* a certificate or other evidence from the bureau of internal revenue showing the amount of the United States estate tax as computed by that department. The *department of revenue* shall enter an order determining such *state estate tax* and the amount thereof so due and payable. Any person in interest aggrieved by such determination shall have the same right to *apply for district court determination and* of rehearing and appeal as is now provided for in the determination of inheritance taxes.

(g) Intent of subdivisions (a) to (h). It is hereby declared to be the intent and purpose of subdivisions (a) to (h) to obtain for this state the benefit of the credit allowed under the provisions of said Internal Revenue Code, to the extent that this state may be entitled by the provisions of said act, by imposing additional taxes and the same shall be liberally construed to effect this purpose.

(h) Provisions applicable. The provisions of sections 91-4401 to 91-4456, inclusive, relating to the tax on inheritances and transfers, shall apply to the taxes imposed by subdivisions (a) to (h), in so far as the same are applicable and not in conflict with the provisions hereof."

Section 13. Section 91-3406, R.C.M. 1947, is amended to read as follows:

"91-3406. **Claims for less than nominal value.** *If the personal repre-*

*sentative* pays any claim for less than its nominal value, he is only entitled to charge in his account the amount he actually paid."

Section 14. Section 91-612, R.C.M. 1947, is amended to read as follows:

**"91-612. Moneys of estates in hands of public administrator, deposit and payment of — escheated estates fund.** It is the duty of every public administrator, as soon as he receives the same, to deposit with the county treasurer of the county in which probate proceedings are pending, all moneys of the estate, and such moneys may be drawn upon the order of the *personal representative*, countersigned by a district judge, when required for the purposes of administration. It is the duty of the county treasurer to receive and safely keep all such moneys, and pay them out upon the order of the *personal representative*, when countersigned by a district judge, and not otherwise, and to keep an account with such estate of all moneys received and paid to him; and for the safekeeping and payment of all such moneys, as herein provided, the said treasurer and his sureties are liable upon his official bond. The moneys thus deposited may, upon order of the court or judge, be invested, pending the proceedings, in securities of the United States, or of this state, when such investment is for the best interests of the estate. At the final settlement of any estate, if there be no heirs or other claimants thereof, the district judge shall make an order directing the administrator to sell all property belonging to the estate and pay the proceeds to the county treasurer, who shall credit the same and all other moneys belonging to said estate to the escheated estates fund, and the county treasurer shall forthwith remit all of said money to the *department of revenue* with a statement as to the estates to which the money belongs, *which remittance shall be treated as provided in chapter 5, Title 91, R.C.M. 1947, as amended.*"

Section 15. Section 91-131, R.C.M. 1947, is amended to read as follows:

**"91-131. Mortgage not a revocation of will.** A charge or encumbrance upon any estate, for the purpose of securing the payment of money or the performance of any covenant or agreement, is not a revocation of any will relating to the same estate which was previously executed."

Section 16. Section 91-1106, R.C.M. 1947, is amended to read as follows:

**"91-1106. Costs and expenses — by whom paid.** *When the validity or probate of a will is contested through court action the fees and expenses must be paid by the party contesting the validity or probate of the will, if the will in probate is confirmed. If the probate is revoked, the costs must be paid by the party who resisted the revocation, or out of the property of the decedent, as the court directs.*"

Section 17. There is a new section to be numbered 91A-6-103, R.C.M. 1947, which reads as follows:

**91A-6-103. Terms include personal representative.** Where in the codes of the state of Montana the terms "administrator," "administrator with the will annexed," "executor" or a combination of such terms are

used, such terms shall be deemed to include, unless the context clearly requires to the contrary, the term "personal representative."

Section 18. Section 91-218, R.C.M. 1947, is amended to read as follows:

"91-218. **"Heirs," "relatives," "issue," "descendants," etc.** A testamentary disposition to "heirs," "relations," "nearest relations," "representatives," "legal representatives," or "personal representatives," or "family," "issue," "descendants," "nearest," or "next of kin," of any person, without words of qualification, and when the terms are used as words of donation, and not of limitation, vests the property in those who would be entitled to succeed to the property of such person, according to the provisions *relating to intestate succession* in this code."

Section 19. There is a new section to be numbered 91A-6-104, R.C.M. 1947, which reads as follows:

91A-6-104. **Uniform Probate Code takes precedence.** Should any provision of this act conflict with any provisions of other statutes of the state of Montana relating to probate, guardianship, or other subjects incorporated in this act, and such other statute or statutes was or were adopted prior to the enactment of this act, the provisions of this act shall be deemed to be controlling.

Section 20. **Severability.** If any provision of this act or the application thereof to any person or circumstance is invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provisions or application, and to this end the provisions of this act are declared to be severable.

Approved March 29, 1974

## CHAPTER NO. 366

AN ACT REQUIRING THE STATE BOARD OF INVESTMENTS TO MANAGE FUNDS OF THE FIRE DEPARTMENT RELIEF ASSOCIATIONS IN THE POOLED INVESTMENT FUND; REQUIRING ACTUARIAL VALUATIONS OF SUCH ASSOCIATIONS FOR THE DEPARTMENT OF INTERGOVERNMENTAL RELATIONS; FUNDING SUCH VALUATIONS; AMENDING SECTIONS 11-1914, AND 11-1920, R.C.M. 1947; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 11-1914, R.C.M. 1947, is amended to read as follows:

"11-1914. **Duties of trustees — investment of surplus funds.** (1) The board of trustees of said fire department relief association shall audit the account of the association at least every six (6) months and shall report the condition thereof at the next regular meeting of said associa-

tion. The management of the fire department relief associations in municipalities other than in first and second class cities shall be vested in the board of trustees. When so directed by a majority vote of the members of the association, the board of trustees shall have the power to invest the surplus funds of the association or any part thereof, in any time or saving deposits, in bonds or other securities of the United States government, in general obligation bonds or warrants of any state, county or city as are recommended by the state auditor and approved by the state examiner. At the time of purchase such investments must be stamped in bold-face type, substantially as follows: "Property of the .... Fire Department Relief Association, and negotiable only upon the order of the board of trustees of such association. *Provided, however, that when the average yield on investments of public retirement funds under the state board of investments exceeds by one percent (1%) in any fiscal year the investment yield of said fire department relief association funds such funds shall be remitted to the state treasurer for investment by the state board of investments as is provided in the provisions of this section for associations in first and second class cities; and said fire department relief association shall submit every six (6) months a financial statement detailing their investments to the department of intergovernmental relations; and the department shall advise said fire department relief association of the current yield of investment of public retirement funds.*

(2) The management of the fire department relief associations in first and second class cities shall be vested in the board of trustees of such associations subject to the following provisions of this section.

The board of trustees shall submit to the department of intergovernmental relations before October 1 in each odd-numbered year, all information requested by the department of intergovernmental relations necessary to complete an actuarial valuation of the funds of the association. This valuation is to be prepared by a qualified actuary selected by the department of intergovernmental relations. This valuation shall consider the actuarial soundness of the association's funds for the two (2) preceding fiscal years. A qualified actuary is a member of the American Academy of Actuaries or of any other organization deemed by the municipal audit division to have similar standards. In each fiscal year in which an actuarial valuation is prepared, the department of intergovernmental relations shall submit to the state auditor a request for payment of the expenses incurred in securing the actuarial valuation. These expenses may not exceed six thousand dollars (\$6,000) in any fiscal year and the state auditor shall make payment to the actuary designated by the request.

(3) Whenever the monies in the disability and pension fund exceed:

(a) one and one-half ( $1 \frac{1}{2}$ ) times the monthly benefit paid in the preceding month, or

(b) five thousand dollars (\$5,000), whichever is greater, then the board shall remit such excess amounts to the state treasurer. The state treasurer shall invest such remittances under the direction of the state board of investments as provided by section 79-311.

(4) After January 1, 1975, all investments held by a board of trustees



*shall be transferred as directed by the state board of investments. The state board of investments may defer any such transfer to a date later than January 1, 1975, but not later than the maturity date of the investment. The state board of investment may make rules to implement this section."*

Section 2. Section 11-1920, R.C.M. 1947, is amended to read as follows:

"11-1920. **Estimate of payments.** The state auditor shall estimate the portion of premium taxes needed to make the payments required by this act and shall pay an amount equal to the estimate into the state treasury, to the credit of the earmarked revenue fund. *The state auditor shall pay the actuary fee as required by section 11-1914.* Any balances remaining after such payments have been ordered shall be transferred to the general fund."

Section 3. This act shall be effective on January 1, 1975.

Approved March 29, 1974

## CHAPTER NO. 367

AN ACT TO AMEND THE LEGISLATIVE AUDIT ACT, SECTIONS 79-2303 THROUGH 79-2312, R.C.M. 1947, RENUMBERING AND ADDING NEW SECTIONS TO INCORPORATE PROVISIONS OF THE MODEL POST-AUDITING ACT.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is a new section to be numbered 79-2303.1, R.C.M. 1947, which reads as follows:

79-2303.1. **Legislative audit committee created.** (1) There is hereby created a legislative audit committee which shall be a permanent joint committee of the legislative assembly.

(2) There is hereby created and established the office of the legislative auditor. The director of this office shall be responsible for performing the duties imposed by this act.

Section 2. Section 79-2303, R.C.M. 1947, is renumbered as section 79-2304, and is amended to read as follows:

"79-2304. **Legislative audit committee — appointment and term of members — officers.** The legislative audit committee consists of four (4) members of the Senate and four (4) members of the House of Representatives appointed before the sixtieth legislative day of the first session of the biennium in the same manner as standing committees of the respective houses are appointed. A vacancy on the committee occurring when the legislative assembly is not in session shall be filled by the selection of a member of the legislative assembly by the remaining members of the committee. No more than two (2) of the appointees of each house shall

be members of the same political party. *A member of the committee shall serve until his term of office as a legislator ends or until the end of the sixtieth legislative day of the second session of the biennium following his appointment or until his successor is appointed, whichever occurs first.* The committee shall elect one of its members as chairman and such other officers as it deems necessary."

Section 3. Section 79-2304, R.C.M. 1947, is renumbered as section 79-2305, and is amended to read as follows:

**"79-2305. Meetings.** The committee shall meet *as often as may be necessary, during and between legislative sessions,* to advise and consult with the legislative auditor. Committee members shall be reimbursed from the appropriation to the office of the legislative auditor for their actual and necessary expenses incurred as a result of interim meetings, *and paid compensation as provided by law for interim standing committees.*"

Section 4. Section 79-2306, R.C.M. 1947, is renumbered as section 79-2308, and is amended to read as follows:

**"79-2308. Appointment of employees, consultants, and legal counsel.** The legislative auditor may appoint whatever employees and consultants are necessary to carry out the provisions of this act, within the limitations of legislative appropriations. *The legislative auditor may employ legal counsel to conduct proceedings under this act.*"

Section 5. Section 79-2308, R.C.M. 1947, is renumbered as section 79-2310, and is amended to read as follows:

**"79-2310. Duties of legislative auditor.** The legislative auditor shall

- (1) Audit the financial affairs and transactions of every state agency.
- (2) Make a full, complete and written report of each audit. A copy of each report shall be furnished to the state *department of administration*, to the state agency which is audited, to each member of the committee, and to the legislative council.
- (3) Report immediately in writing to the attorney general *and the governor* any apparent violation of penal statutes disclosed by the audit of a state agency, and furnish the attorney general all information in his possession relative to the violation.
- (4) Report immediately in writing to the governor any instances of misfeasance, malfeasance or nonfeasance by a state officer or employee disclosed by the audit of a state agency.
- (5) Report immediately to the surety upon the bond of any official or employee when an audit discloses a shortage in the accounts of the official or employee. The failure to notify the surety does not release the surety from any obligation under the bond.
- (6) Report to the legislative assembly during the first week of each regular session *in odd numbered years*. Each biennial report shall contain, among other things, copies of, or summaries of audit reports on state agencies and any recommendations relating to such reports.

(7) *Have the authority to audit records of organizations and individuals receiving grants from or on behalf of the state to determine that the grants are administered in accordance with the grant terms and conditions. In each instance when a state agency enters into an agreement to grant resources under its control to others, the agency must obtain the written assent of the grantee to this audit access provision consenting to an audit of such grantee."*

Section 6. Section 79-2310, R.C.M. 1947, is renumbered as section 79-2312, and is amended to read as follows:

"79-2312. **Recommendations of legislative auditor.** The reports of the legislative auditor may include comments, recommendations and suggestions, but he shall have no power to enforce them nor shall he otherwise influence or direct executive or legislative action."

Section 7. Section 79-2312, R.C.M. 1947, is renumbered as section 79-2314, and is amended to read as follows:

"79-2314. **Information from state agencies.** (1) All state agencies shall aid and assist the legislative auditor in the auditing of books, accounts and records.

(2) The legislative auditor may examine at any time the books, accounts and records, confidential or otherwise, of a state agency; however, this shall not be construed as authorizing the publication of information which the law prohibits publishing.

(3) The head of each state agency shall immediately notify the legislative auditor in writing upon the discovery of any larceny, or embezzlement, actual or suspected involving state moneys or property under his control or for which he is responsible."

Section 8. Section 79-2305, R.C.M. 1947, is renumbered 79-2307; section 79-2307, R.C.M. 1947, is renumbered 79-2309; and section 79-2309, R.C.M. 1947, is renumbered 79-2311.

Approved March 29, 1974

## CHAPTER NO. 368

AN ACT SUBROGATING THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO THE RIGHT OF A CHILD OR CHILDREN OR PERSON HAVING THE CUSTODY OF SUCH CHILD OR CHILDREN TO PROSECUTE AND RECOVER UPON SUPPORT OBLIGATIONS OWED BY AN OBLIGOR PARENT IN THE AMOUNT OF PUBLIC ASSISTANCE PAYMENTS MADE TO SUCH CHILD OR CHILDREN OR THE AMOUNT OF COURT ORDERED SUPPORT, WHICHEVER IS LESS.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is a new section to be numbered 71-511, R.C.M. 1947, which reads as follows:

**71-511. Payment of public assistance money — subrogation of the department of social and rehabilitation services — schedule of payments.** Any payment of public assistance money made to or for the benefit of any dependent child or children creates a debt due and owing to the department of social and rehabilitation services by the natural or adoptive parent or parents who are legally responsible for the support of such children by statute or court decree in an amount equal to the amount of public assistance so paid. Provided, that where the support obligation is based upon a court decree, the debt shall be limited to the amount of said court decree.

The department of social and rehabilitation services shall be subrogated to the right of said child or children or person having the care, custody and control of said child or children to prosecute or maintain and recover upon any support action or execute any administrative remedy existing under the laws of the state of Montana to obtain reimbursement of monies thus expended. If a court decree enters judgment for an amount of support to be paid by an obligor parent, the department shall be subrogated to the debt created by such order and said money judgment shall be deemed to be in favor of the department of social and rehabilitation services.

In no case shall a debt arising under this section be incurred by or collected from a parent or other person who is the recipient of public assistance monies for the benefit of minor dependent children for the period such person or persons are in such status.

The remedies herein provided are in addition to and not in lieu of existing common law and statutory law.

The department of social and rehabilitation services or its legal representatives may at any time consistent with the income, earning capacity and resources of the debtor, petition the court having jurisdiction over the particular case to set or reset a level and schedule or payments to be paid upon the debt.

Approved March 29, 1974

## CHAPTER NO. 369

AN ACT PROVIDING FOR LICENSING HANDICAPPED PERSONS TO OPERATE MOTOR-DRIVEN WHEELCHAIRS AND SIMILAR VEHICLES; EXEMPTING SUCH VEHICLES FROM REGISTRATION; REQUIRING CERTAIN SAFETY FEATURES; AND AMENDING SECTION 53-104, R.C.M. 1947.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 53-104, R.C.M. 1947, is amended to read as follows:

**"53-104. "Motor vehicle" defined.** The word "motor vehicle" as used in this *Title* shall include trailers, semitrailers, automobiles, auto trucks,

motorcycles, cycle motors, and all other vehicles propelled by their own power, used upon the public highways of the state, excepting steam or gas tractors, or *self-propelled wheelchairs or similar vehicles operated by invalids.*"

Section 2. There is a new section to be numbered 11-911.1, R.C.M. 1947, which reads as follows:

**11-911.1. Electric wheelchairs may be operated on streets.** A person who by reason of physical disability is unable to move about as a pedestrian may operate a self-propelled wheelchair or similar vehicle, during daylight hours, on the streets of a city or town. When operated on public streets, such vehicles must display the slow moving equipment emblem required in section 32-21-130(1), or be equipped with a windwhip displaying a red flag.

Section 3. There is a new section to be numbered 11-911.2, R.C.M. 1947, which reads as follows:

**11-911.2 City and towns may regulate.** Use of self-propelled wheelchairs and similar vehicles may be regulated by cities and towns.

Approved March 29, 1974

## CHAPTER NO. 370

AN ACT CHANGING THE PROPERTY TAX LIABILITY OF HARVESTING MACHINERY OWNED BY CUSTOM COMBINE OPERATORS, AND AMENDING SECTION 84-6008, R.C.M. 1947.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 84-6008, R.C.M. 1947, is amended to read as follows:

**"84-6008. Assessment of personal property brought into the state—exceptions.** Any personal property, including livestock, brought, driven or coming into this state at any time during the year which is used in the state for hire, compensation or profit; or if the owner and/or the user of the property is engaged in gainful occupation or business enterprise in the state; or the property otherwise comes to rest and becomes a part of the general property of the state, shall be subject to taxation and shall be assessed for all taxes, levied or leviable for that year in the county in which the same shall thus be, in the same manner and to the same extent except as hereinafter otherwise provided, as though such property had been in the county on the regular assessment date; provided that such property has not been regularly assessed for the year in some other county of the state; provided further that nothing herein contained shall be construed into authority to assess or levy any tax against any merchant or dealer within this state on goods, wares or merchandise brought into the county to replenish the stock of such merchant or dealer, in addition to

the tax levied against the inventory of said merchant or dealer on the regular assessment date; provided further, that this act shall not apply to motor vehicles brought, driven or coming into this state by any nonresident migratory bona fide agricultural workers temporarily employed in agricultural work in Montana where said motor vehicles are used exclusively for transportation of agricultural workers. *Agricultural harvesting machinery classified under Class 2, section 84-301, R.C.M. 1947, licensed in other states, operated on the lands of persons other than the owner of the machinery, under contracts for hire shall be subject to a fee, in lieu of taxation, of thirty-five dollars (\$35) per machine for a sixty (60) day period. Such machines shall be subject to taxation under Class 2 only if they are sold in Montana.*"

Approved March 29, 1974

## CHAPTER NO. 371

AN ACT TO PROVIDE THAT CUSTOM COMBINERS SHALL PAY A FORTY DOLLAR (\$40) TAX PER UNIT IN LIEU OF CERTAIN OTHER FEES AND TAXES.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is a new section to be numbered 84-6015, R.C.M. 1947, which reads as follows:

**84-6015. Custom combiner's tax — collection — distribution — not transferable.** (1) In lieu of the taxes required by section 84-6008, R.C.M. 1947, motor vehicle license fees, Title 53, R.C.M. 1947, gross vehicle weight fees and over-width permits, Title 32, R.C.M. 1947, a nonresident engaged in the business of custom combining who brings equipment into the state of Montana shall pay a tax of forty dollars (\$40) per unit for a period beginning July 1 and ending October 31. A unit shall be defined as:

- (a) one (1) truck suitable for hauling grain,
- (b) one (1) header trailer or one (1) combine trailer, and
- (c) pickup trucks and all other equipment, except combines, used by a nonresident and brought into the state as part of his business of custom combining.

(2) The tax required by this section shall be collected by the department of highways. Upon payment of the tax the department of highways shall provide a prominent sticker to be displayed on each truck, header trailer or combine trailer and other equipment used by the nonresident in his business of custom combining in the state of Montana, which sticker shall be valid for a period beginning July 1 and ending October 31.

(3) All tax collected under this section shall be distributed not later than December 1 immediately following the period of license as follows:

sixty-two and one-half percent (62-½%) to the county general fund in the county in which the permittee declares the greatest amount of time will be spent to operate, thirty-seven and one-half percent (37-½%) to the earmarked revenue fund for the department of highways.

(4) The identifying device and tax paid for each vehicle in a unit shall not be transferable from one vehicle to another or transferable on the sale or change of ownership.

Approved March 29, 1974

## CHAPTER NO. 372

AN ACT TO ALLOW THE REGIONAL BOARD TO RETAIN ALL FEES RECEIVED FOR THE TREATMENT OF PATIENTS UNDER THE COMMUNITY MENTAL HEALTH SERVICES PROGRAM AND TO RESCIND THE REQUIREMENT IN SENATE BILL NO. 51, 1973 SESSION, PROVIDING FOR THE DEPOSIT OF FORTY PERCENT (40%) OF THESE FEES IN THE GENERAL FUND.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. All fees received for the treatment of patients under the community mental health services program, Warm Springs state hospital, shall be retained by the regional board to the extent necessary to assure full federal funding. If retention by the regional boards of all fees received for such treatment ceases to be a requirement for full federal funding, then forty percent (40%) of these fees shall be deposited in the general fund. Subject to the provisions of this act, the requirement that forty percent (40%) of these fees be deposited in the general fund as provided in Senate Bill No. 51, 1973 session, is rescinded, retroactive to the date of enactment of that provision.

Approved March 29, 1974

## CHAPTER NO. 373

AN ACT PROVIDING FOR VARIANCES IN KINDERGARTEN PROGRAMS IF APPROVED BY THE SUPERINTENDENT OF PUBLIC INSTRUCTION; PROVIDING THAT SUCH PROGRAM WILL COMPUTE THE AVERAGE NUMBER BELONGING IN A MANNER PRESCRIBED BY THE SUPERINTENDENT OF PUBLIC INSTRUCTION WITHIN A CERTAIN LIMIT; AND AMENDING SECTIONS 75-6902, 75-7402, AND 75-7403, R.C.M. 1947.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 75-6902, R.C.M. 1947, is amended to read as follows:

**"75-6902. Definition and calculation of average number belonging (ANB).** The term "average number belonging" or "ANB" shall mean the average number of regularly enrolled, full-time pupils attending the public schools of a district. Average number belonging shall be computed by determining the total of the aggregate days of attendance by regularly enrolled, full-time pupils during the current school fiscal year plus the aggregate days of absence by regularly enrolled, full-time pupils during the current school fiscal year, and by dividing such total by one hundred eighty (180). Attendance for a part of a morning session or a part of an afternoon session by a pupil shall be counted as attendance for one-half ( $\frac{1}{2}$ ) day. In calculating the ANB for pupils enrolled in a program established under section 75-7507 prior to January 1, 1974, or pursuant to section 75-7507 (1), attendance at, or absence from, a regular session of the program for at least two hours of either a morning or an afternoon session will be counted as one-half ( $\frac{1}{2}$ ) of a day attended or absent as the case may be. *If a variance has been granted as provided in section 75-7403, ANB will be computed in a manner prescribed by the superintendent of public instruction but in no case shall the ANB exceed one-half ( $\frac{1}{2}$ ) for each kindergarten pupil.* When any pupil has been absent, with or without excuse, for more than ten (10) consecutive school days, including pupil instruction related days, his absence after the tenth (10th) day of absence shall not be included in the aggregate days of absence and his enrollment in the school shall not be considered in the calculation of the average number belonging until he resumes attendance at school.

The average number belonging of the regularly enrolled, full-time pupils for the public schools of a district shall be calculated, individually, for each school except that when:

(1) more than one school of a district, other than a junior high school in an elementary district which has been approved and accredited as a junior high school, is located within the incorporated limits of a city or town, the average number belonging of such schools shall be based on the aggregate of all the regularly enrolled, full-time pupils attending such schools located within the incorporated limits of a city or town;

(2) a junior high school which has been approved and accredited as a junior high school is located within the incorporated limits of a city or town in which a high school is located, all of the regularly enrolled, full-time pupils of the junior high school shall be considered as high school district pupils for the purposes of calculating the average number belonging of the high schools located within the incorporated limits of such city or town; or

(3) a school has not been accredited by the board of education, the regularly enrolled, full-time pupils attending the nonaccredited school shall not be eligible for average number belonging calculation purposes, nor will an average number belonging for the nonaccredited school be used in determining the foundation program for such district."

Section 2. Section 75-7402, R.C.M. 1947, is amended to read as follows:

**"75-7402. School fiscal year.** The school fiscal year shall begin on



the first day of July and end on the last day of June. At least one hundred eighty (180) school days of pupil instruction shall be conducted during each school fiscal year, *unless a variance for kindergarten has been granted under section 75-7403*. Any district that fails to provide for at least one hundred eighty (180) school days of pupil instruction shall not be entitled to receive any apportionment of the state interest and income funds. Any such forfeited moneys shall be apportioned by the county superintendent to the other elementary districts of his county."

Section 3. Section 75-7403, R.C.M. 1947, is amended to read as follows:

"75-7403. **School day and week.** A school day of pupil instruction shall be at least two (2) hours for kindergartens and all other preschool programs, *unless a variance has been granted by the superintendent of public instruction in accordance with the policies of the board of public education*, at least four (4) hours for grades one (1) through three (3), and at least six (6) hours for grades four (4) through twelve (12). The number of hours in any one school day for grades four (4) through twelve (12) may be reduced by one (1) hour if the total number of hours in the school week is not less than thirty (30) hours. The number of hours in a school week may be reduced, in an emergency, with the approval of the board of public education."

Approved March 29, 1974

## CHAPTER NO. 374

AN ACT TO AMEND SECTION 68-1602, R.C.M. 1947, TO PROVIDE AN EXEMPTION TO THE EXCLUSION FROM THE RETIREMENT SYSTEM FOR PERSONS WHO ARE MEMBERS OF ANY OTHER RETIREMENT OR PENSION SYSTEM.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 68-1602, R.C.M. 1947, is amended to read as follows:

"68-1602. **Exclusions.** The following persons shall not become members of the retirement system:

(1) elective officers who have not filed with the board of administration written requests to become members; provided that any person so excluded from membership may later become a member by otherwise becoming an employee or by written request after a subsequent election to office; and provided further that if he shall affirmatively exercise the option, the contributions of the employer, because of his membership, shall be the same as they would have been had he not been so excluded;

(2) inmates of state institutions who are allowed compensation for such service as they are able to perform;

(3) persons in state institutions principally for the purpose of training, but who receive compensation;

(4) independent contractors unless written contract specifies the creation of an employer-employee relationship for purposes of retirement coverage under the Public Employees' Retirement System Act;

(5) employees serving in employment which does not exceed the equivalent of sixty (60) working days in any fiscal year;

(6) employees in service on July 1, 1945, or prior thereto who filed with the board of administration an election not to become members; provided, any person so excluded from membership by his own election may become a member by meeting the requirements of the balance of this subsection. Such a person must file an election to become a member with the board of administration no later than July 1, 1975; provided, that any such person who is not an employee on July 1, 1974, may make such filing no later than one (1) year after subsequently becoming an employee. In either event, such person must thereupon pay to the retirement system the amount which he and his employer would have contributed had he not been so excluded plus interest which would have accumulated thereon. All benefits payable thereafter to such person shall be the same as if such person had never filed an election not to be a member;

(7) persons directly appointed by the governor, who do not file with the board of administration an election in writing to become members;

(8) persons who are members of any other retirement or pension system supported wholly or in part by funds of the United States government, any state government or political subdivision thereof and who are receiving credit in such other system for service, it being the purpose of this section to prevent a person from receiving credit for the same service in two (2) retirement systems supported wholly or in part by public funds, and no person shall receive such credit under any circumstances; any member of the retirement system who, because of his employment by the state, shall be required to become a member of any such other systems, shall be considered solely for the purposes of making normal contributions as permanently separated from service; the accumulated contributions of any member who shall have died after becoming a member of such other system and before receiving said accumulated contributions, shall be paid to the beneficiary nominated by him to receive any death benefit payable under section 68-2301; employer contributions on the basis of compensation earned by members after the effective date of termination of membership herein because of the membership in such other system, shall be repaid to the employer; for the purpose of this section, persons receiving pensions, retirement allowances or other payments, from any source, on account of employment other than as an employee as defined in this act, shall not be considered, because of such receipt, members of any other retirement or pension system; *provided, however, that where an employer has entered into a collective bargaining agreement which includes provisions for payments or contributions by the employer in lieu of wages to a retirement or pension plan qualified by the Internal Revenue Service for its employees, such employees shall remain eligible, if otherwise qualified, for membership in the retirement system, and the payments or contribu-*

*tions in lieu of wages shall not be deemed a part of the employee's compensation for purposes of computing the employer or employee contributions to the retirement system;*

(9) court commissioners or appointive members of any board or commission who serve the state or any contracting employer intermittently and who are paid on a per diem basis;

(10) persons who become employees after they have reached their sixtieth birthday and have no creditable service in this system, and who do not file with the board of administration an election to become members;

(11) employees of county hospitals or county rest homes in the sixth and seventh class counties unless they elect to file with the board of administration an election in writing to become members."

Approved March 29, 1974

## CHAPTER NO. 375

AN ACT REVISING THE LIST OF PUBLIC USES FOR WHICH THE RIGHT OF EMINENT DOMAIN MAY BE EXERCISED, AND AMENDING SECTION 93-9902, R.C.M. 1947.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 93-9902, R.C.M. 1947, is amended to read as follows:

"93-9902. **What are public uses.** Subject to the provisions of this chapter, the right of eminent domain may be exercised in behalf of the following public uses:

1. All public uses authorized by the government of the United States.
2. Public buildings and grounds for the use of the state, and all other public uses authorized by the legislative assembly of the state.
3. Public buildings and grounds for the use of any county, city, or town, or school districts; canals, aqueducts, flumes, ditches, or pipes conducting water, heat, or gas for the use of the inhabitants of any county, city, or town; raising the banks of streams, removing obstructions therefrom, and widening, deepening, or straightening their channels; roads, streets, and alleys, and all other public uses for the benefit of any county, city, or town, or the inhabitants thereof, which may be authorized by the legislative assembly; but the mode of apportioning and collecting the costs of such improvements shall be such as may be provided in the statutes or ordinances by which the same may be authorized.
4. Wharves, docks, piers, chutes, booms, ferries, bridges, of all kinds, private roads, plank and turnpike roads, railroads, canals, ditches, flumes,

aqueducts, and pipes for public transportation, supplying mines, mills, and smelters for the reduction of ores and farming neighborhoods with water, and drainage and reclaiming lands, and for floating logs and lumber on streams not navigable, and sites for reservoirs, necessary for collecting and storing water. *Provided, however, that such reservoir sites must possess a public use demonstrable to the district court as the highest and best use of the land.*

5. Roads, tunnels, ditches, flumes, pipes, and dumping places for working mines, mills, or smelters for the reduction of ores; also outlets, natural or otherwise, for the flow, deposit, or conduct of tailings or refuse matter from mines, mills and smelters for the reduction of ores, also an occupancy in common by the owners or the possessors of different mines of any place for the flow, deposit, or conduct of tailings or refuse matter from their several mines, mills, or smelters for reduction of ores, and sites for reservoirs necessary for collecting and storing water. *Provided, however, that such reservoir sites must possess a public use demonstrable to the district court as the highest and best use of the land.*

6. Private roads leading from highways to residences or farms.

7. Telephone or electric light lines.

8. Telegraph lines.

9. Sewerage of any city, county, or town, or any subdivision thereof, whether incorporated or unincorporated, or of any settlement consisting of not less than ten (10) families, or of any public buildings belonging to the state, or to any college or university.

10. Tramway lines.

11. Electric power lines.

12. Logging railways.

13. Temporary logging roads and banking grounds for the transportation of logs and timber products to public streams, lakes, mills, railroads, or highways, for such time as the court or judge may determine; provided, the grounds of state institutions be excepted.

14. Underground reservoirs suitable for storage of natural gas.

15. To mine and extract ores, metals or minerals owned by the plaintiff located beneath or upon the surface of property where the title to said surface vests in others; provided, however, the use of the surface for strip mining or open pit mining of coal (i.e., any mining method or process in which the strata or overburden is removed or displaced in order to extract the coal) is not a public use and eminent domain may not be exercised for this purpose."

Approved March 29, 1974

## CHAPTER NO. 376

AN ACT TO AMEND SECTIONS 84-202 AND 84-301, R.C.M. 1947, TO

**EXEMPT FROM TAXATION HOUSEHOLD GOODS AND PERSONAL PROPERTY USED FOR PERSONAL OR DOMESTIC PURPOSES; AND PROVIDING AN EFFECTIVE DATE.**

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 84-202, R.C.M. 1947, is amended to read as follows:

**"84-202. Exemptions from taxation.** (1) The property of the United States, the state, counties, cities, towns, school districts, municipal corporations, public libraries, such other property as is used exclusively for agricultural and horticultural societies, for educational purposes, places of actual religious worship, hospitals and places of burial not used or held for private or corporate profit, and institutions of purely public charity, evidence of debt secured by mortgages of record upon real or personal property in the state of Montana, and public art galleries and public observatories not used or held for private or corporate profit, are exempt from taxation, but no more land than is necessary for such purpose is exempt; provided, the term "institutions of purely public charity" as used in this act shall include organizations owning and operating facilities for the care of the retired or aged or chronically ill which are not operated for gain or profit; provided, that the terms public art galleries and public observatories used in this act shall mean only such art galleries and observatories whether of public or private ownership, as are open to the public, without charge or fee at all reasonable hours, and are used for the purpose of education only, and also when a clubhouse or building erected by or belonging to any society or organization of honorably discharged United States soldiers, sailors or marines who served in army or navy of United States, is used exclusively for educational, fraternal, benevolent or purely public charitable purposes, rather than for gain or profit, together with the library and furniture necessarily used in any such building, and all property, real or personal, in the possession of legal guardians of incompetent veterans of the World War or minor dependents of such veterans, where such property is funds or derived from funds received from the United States as pension, compensation, insurance, adjusted compensation, or gratuity, shall be exempt from all taxation as property of the United States while held by the guardian, but not after title passes to the veteran or minor in his or her own right on account of removal of legal disability.

(2) *All household goods and furniture, including clocks, musical instruments, sewing machines, wearing apparel of members of the family actually used by the owner for personal and domestic purposes, or for furnishing or equipping the family residence are exempt from taxation."*

Section 2. Section 84-301, R.C.M. 1947, is amended to read as follows:

**"84-301. Classification of property for taxation.** For the purpose of taxation the taxable property in the state shall be classified as follows:

**Class One.** The annual net proceeds of all mines and mining claims, after deducting only the expenses specified and allowed by section 84-5403; also where the right to enter upon land, to explore or prospect,

or dig for oil, gas, coal or mineral is reserved in land by any person or corporation, the surface title to which has passed to another, the assessor and the state and county boards of equalization shall determine the value of the right to enter upon said tract of land for the purpose of digging, exploring, or prospecting for gas, oil, coal or minerals, and the same shall be placed in this classification for the purpose of taxation.

**Class Two.** All agricultural and other tools, implements and machinery, gas and other engines and boilers, threshing machines and outfits used therewith, automobiles, motor trucks and other power-driven cars, vehicles of all kinds except mobile homes, boats and all watercraft, harness, saddlery and robes and except as provided in Class Five (b) of this section, all poles, lines, transformers, transformer stations, meters, tools, improvements, machinery and other property used and owned by all persons, firms, corporations, and other organizations which are engaged in the business of furnishing telephone communications, exclusively to rural areas, or to rural areas and cities and towns provided that any such city or town has a population of eight hundred (800) persons or less; and provided further, that the average circuit miles for each station on the system is more than one and one-quarter ( $1 \frac{1}{4}$ ) miles.

**Class Three.** Livestock, poultry and unprocessed products of both; stocks of merchandise of all sorts, together with furniture and fixtures used therewith, except mobile homes; and all office or hotel furniture and fixtures.

**Class Four.** (a) All land, town and city lots, with improvements, and all trailers affixed to land owned, leased, or under contract or purchase by the trailer owner, manufacturing and mining machinery, fixtures and supplies, except as otherwise provided by the constitution of Montana, and except as such property may be included in Class Five, Class Seven or Class Eight.

(b) Mobile homes without regard to the ownership of the land upon which they are situated, except those held by a distributor or dealer of mobile homes as part of his stock in trade, and except as such property may be included in Class Eight.

**Class Five.** (a) All moneys and credits, secured or unsecured, including all state, county, school district and other municipal bonds, warrants and securities, without any deduction or offset; provided, however, that the terms "moneys and credits" as herein used shall not embrace the moneyed capital employed in the banking business by any banking corporation or individual in this state.

(b) All poles, lines, transformers, transformer stations, meters, tools, improvements, machinery and other property used and owned by co-operative rural electrical and co-operative rural telephone associations organized under the laws of Montana except those within the incorporated limits of a city or town in which less than ninety-five per cent (95%) of the electric consumers and/or telephone users are served by a co-operative organization, and as to the property enumerated in this subsection (b) within incorporated limits of a city or town in which less than ninety-five per cent (95%) of the electric consumers or users will be served by a co-operative organization, such property shall be put in Class Two.

(c) All unprocessed agricultural products either on the farm or in storage, irrespective of whether said products are owned by the elevator, warehouse or flour mill owner or company storing the same, or any other person whomsoever, and excepting livestock and poultry and the unprocessed products of both.

(d) The dwelling house, and the lot on which it is erected, owned and occupied by any resident of the state, who has been honorably discharged from active service in any branch of the armed forces, who is rated one hundred per cent (100%) disabled due to a service-connected disability by the United States veterans administration or its successors.

In the event of the veteran's death, the dwelling house, and the lot on which it is erected, so long as the widow remains unmarried and the owner and occupant of the property, shall remain within this classification.

Class Six. Property formerly included in this class is now classified by section 84-308, R.C.M. 1947.

Class Seven. (a) All new industrial property. New industrial property shall mean any new industrial plant, including land, buildings, machinery and fixtures which, in the determination of the state board of equalization, is used by a new industry during the first three (3) years of operation not having been assessed prior to July 1, 1961, within the state of Montana. New industry shall mean any person, corporation, firm, partnership, association, or other group which establishes a new plant or plants in this state for the operation of a new industrial endeavor, as distinguished from a mere expansion, reorganization, or merger of an existing industry or industries. Provided, however, that new industrial property shall be limited to industries that manufacture, mill, mine, produce, process or fabricate materials, or do similar work in which capital and labor are employed and in which materials unserviceable in their natural state are extracted, processed or made fit for use or are substantially altered or treated so as to create commercial products or materials; and in no event shall the term new industrial property be included to mean property used by retail or wholesale merchants, commercial services of any type, agriculture, trades or professions. And provided further, that new industrial property shall not be included to mean property which is used or employed in any industrial plant which has been in operation in this state for three (3) years or longer. Any person, corporation, firm, partnership, association or other group seeking to qualify its property for inclusion in this class shall make application to the state board of equalization in such manner and form as may be required by said board.

Class Eight. Any improvement on real property, trailers affixed to land or mobile home belonging to any person who qualifies under any one or more of the hereinafter set forth categories, valued at not more than seventeen thousand five hundred dollars (\$17,500), which is owned or under a contract for deed, and which is actually occupied by:

(1) a widow sixty-two (62) years of age or older, whether with or without minor dependent children, who qualifies under the income limitations of (4), or

(2) a widower sixty-five (65) years of age or older, whether with or

without minor dependent children, who qualifies under the income limitations of (4), or

(3) a widow with minor or dependent children regardless of age, who qualifies under the income limitations of (4), or

(4) a recipient of retirement benefits whose income from all sources is not more than four thousand dollars (\$4,000) for a single person and five thousand two hundred dollars (\$5,200) for a married couple per annum. Provided, further, that one who applies for classification of property under this class must make an affidavit before the county assessor of the county in which said property is located, on a form as may be provided by the state board of equalization supplied without cost to the applicant, as to his income, if applicable, as to his retirement benefits, if applicable, or, as to his marital status, if applicable, and to the fact that he or she actually occupies such improvements with right of the county welfare board to investigate the applicant, on the completion of the form, as to answers given on the form. Provided, further, that the value of said property shall not increase during the life of the recipient of retirement benefits or widow or widower covered under this class.

Class Nine. All property not included in the eight (8) preceding classes."

Section 3. This act shall be effective on passage and approval.

Approved March 30, 1974

## CHAPTER NO. 377

AN ACT TO AMEND SECTIONS 25-501 AND 93-303, R.C.M. 1947, TO IMPLEMENT THE EXECUTIVE AND JUDICIAL RECOMMENDATIONS OF THE MAJORITY REPORT OF THE MONTANA SALARY COMMISSION BY INCREASING THE COMPENSATION OF ELECTIVE OFFICIALS IN THE EXECUTIVE AND JUDICIAL BRANCHES; AND PROVIDING FOR AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 25-501, R.C.M. 1947, is amended to read as follows:

"25-501. **Salaries of certain elected state officials.** The annual salaries paid to certain elected officials of the state of Montana shall be as follows:

|                                           |            |
|-------------------------------------------|------------|
| Governor .....                            | \$30,000   |
| Lieutenant governor .....                 | \$20,500   |
| Chief justice of the supreme court.....   | \$28,000   |
| Justices of the supreme court, each.....  | \$27,000   |
| Attorney general .....                    | \$25,000   |
| State auditor .....                       | \$18,000   |
| Superintendent of public instruction..... | \$20,000   |
| Railroad commissioner.....                | \$18,000   |
| State treasurer .....                     | \$18,000   |
| Secretary of state .....                  | \$18,000   |
| Clerk of the supreme court.....           | \$14,000." |

Section 2. Section 93-303, R.C.M. 1947, is amended to read as follows:



"93-303. **Salaries of district judges.** The annual salary of each district judge shall be *twenty-five thousand dollars (\$25,000)*."

Section 3. This act is effective July 1, 1974.

Approved March 30, 1974

## CHAPTER NO. 378

AN ACT RELATING TO AIRPLANES OWNED OR LEASED BY THE STATE OF MONTANA; CONSTITUTING THE DEPARTMENT OF INTERGOVERNMENTAL RELATIONS AS CUSTODIAN OF STATE OWNED OR LEASED AIRPLANES; AND PROVIDING FOR RULES AND REGULATIONS GOVERNING THE USE OF STATE OWNED OR LEASED AIRPLANES.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is a new section to be numbered 1-1101, R.C.M. 1947, which reads as follows:

1-1101. **Department of intergovernmental relations to be custodian of all airplanes owned or leased by state.** The department of intergovernmental relations is hereby constituted the custodian of all airplanes owned or leased by the state of Montana or its boards, commissions or agencies.

Section 2. There is a new section to be numbered 1-1102, R.C.M. 1947, which reads as follows:

1-1102. **Rules and regulations — authority and enforcement.** The department of intergovernmental relations is hereby delegated the power and authority:

(1) to formulate and enforce reasonable rules and regulations governing the use and operation of all airplanes under control of the division;

(2) to encourage and coordinate use of such airplanes by individual state agencies — an agency for which an aircraft has been specially equipped or modified shall have priority for the use of such aircraft;

(3) to charge the individual state agencies using the airplanes the estimated costs for administration, operation, maintenance, service, storage, and replacement;

(4) to establish a capital fund for new and replacement equipment using that portion of the money paid by individual state agencies for the use of the airplanes; and

(5) to place any surplus resulting from use charges into the capital fund.

Section 3. There is a new section to be numbered 1-1103, R.C.M. 1947, which reads as follows:

1-1103. **Deficit.** Any deficit resulting from the operation of the airplanes by the department of intergovernmental relations shall be provided for in the state's general fund budget as determined by legislative action.

Section 4. There is a new section to be numbered 1-1104, R.C.M. 1947, which reads as follows:

1-1104. **New equipment.** New equipment as authorized by legislative action shall be purchased with the capital fund. Additional funds for such purchases may be provided for in the state's general fund budget.

Section 5. There is a new section to be numbered 1-1105, R.C.M. 1947, which reads as follows:

1-1105. **Act not to impair federal aid eligibility — severable construction.** If any provision of this act impairs or jeopardizes the ability of a state agency to accept and expend federal funds, that provision shall be considered invalid as to that agency. It is the intent of the legislature that if a part of this act is invalid in one or more of its applications, all other parts and applications of that part which are severable shall remain in effect.

Approved March 30, 1974

# **APPROPRIATIONS**

**ENACTED BY THE**

**Forty-Third Legislature**

In Second Regular Session

**STATE OF MONTANA**

**1974**

**1505**



# **APPROPRIATIONS**

## **HOUSE BILL NO. 566**

**AN ACT TO APPROPRIATE MONEYS TO THE DEPARTMENT OF LABOR AND INDUSTRY FOR THE BIENNIUM ENDING JUNE 30, 1975; AND PROVIDING FOR OTHER MATTERS RELATING TO THE APPROPRIATION.**

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** For the purposes of this act, unless otherwise stated:

(1) "Agency" includes all state offices, departments, divisions, boards, commissions, councils, committees, institutions, university units, and other entities or instrumentalities of state government.

(2) "Program" means a segment that includes a combination of planned efforts to provide a service.

(3) "Approved budget amendment" means approval by the governor, or his designated representative, of a request submitted through the budget bureau to:

(a) obtain financing for a new or expanded program from funds which were not available for consideration by the legislative assembly but which have become available from a source other than state's general fund; or

(b) transfer appropriations, including general fund appropriations, between programs within a state agency; or

(c) expend remaining balances of the first fiscal year appropriations, including general fund appropriations, during the second fiscal year of the biennium.

**Section 2.** The appropriations contained in this act are intended to provide only necessary and ordinary expenditures for the year for which the appropriations are made. Except for amounts subject to accrual at the end of each fiscal year, the unexpended balance of any appropriation shall revert to the fund from which it was appropriated. In case of necessity, an appropriation not expended during the first fiscal year of the biennium may be expended during the second fiscal year by approved budget amendment.

**Section 3.** The appropriations in this act are intended to provide for all expenditures for:

- (1) personal services;
- (2) all other ordinary and necessary expenditures for the operation of the agency and the program to which the appropriation applies;
- (3) repairs and maintenance, other than major alterations of existing buildings; and
- (4) the purchase or replacement of capital items other than expenditures for the construction, improvement, or furnishing of buildings or purchase of buildings or land unless specifically authorized.

Section 4. Financing for new or expanded programs from sources other than general fund may be made available by approved budget amendment.

Section 5. Each agency shall submit to the budget bureau, on or before July 1 of each fiscal year, an operational plan within the limits of appropriations which includes the position and salary of all officers and employees. The salary of the chief administrator of each agency shall be determined by the appointing authority. Informational copies of operational plan changes shall be submitted to the budget bureau for review.

Section 6. No new program may be established and no existing program may be expanded beyond the scope of the programs approved by the legislative assembly in the 1975 biennial budget, unless the new program or the program expansion and its method of financing is approved by the governor, or his designated representative after presentation through the budget bureau.

Section 7. Transfers of appropriated funds between programs of an agency may be made only by an approved budget amendment.

Section 8. If the operation of a state agency is financed by an appropriation or appropriations from the general fund as well as by appropriation from other sources, the funds provided by appropriation from the general fund shall be decreased by the amount that the funds received from other sources exceeds the amount from other sources appropriated by the legislature in the 1975 biennial budget, provided that:

- (1) the decrease does not jeopardize the receipt of the funds to be received from other sources; and
- (2) this section shall not apply to any excess funds if they are to be expended for a new or expanded program approved by the governor, or his designated representative upon a request submitted to him through the budget bureau.

Section 9. When an agency receives federal funds as a reimbursement for the cost of administering a federal program and this cost was financed by a general fund appropriation, the federal funds shall be deposited into the general fund unless usage of the federal funds is restricted by federal provisions.

Section 10. The governor may reduce any appropriation by not more than fifteen percent (15%) except appropriations for:

- (1) payment of interest and retirement of the state debt;
- (2) operation of the legislature;
- (3) public schools;
- (4) the judiciary; or
- (5) salaries of public officers, during their term of office.

Section 11. If any section, subsection, sentence, clause, or phrase of this act is for any reason held unconstitutional, such decision shall not affect the validity of the remaining portions of this act.

Section 12. The following moneys are appropriated for the biennium ending June 30, 1975:

|                                  | Fiscal Year<br>Ending<br><u>6/30/74</u> | Fiscal Year<br>Ending<br><u>6/30/75</u> |
|----------------------------------|-----------------------------------------|-----------------------------------------|
| DEPARTMENT OF LABOR AND INDUSTRY |                                         |                                         |
| Labor Administration Program     |                                         |                                         |
| From General Fund                | 0                                       | \$28,800                                |

The purpose of this appropriation is to implement functions relative to the employment and related needs of women in the work force. It provides for two (2) full time equivalents, related support expenses and reimbursement for travel costs and per diem for members of an advisory council.

Approved March 28, 1974

## HOUSE BILL NO. 627

AN ACT APPROPRIATING MONEY TO THE DEPARTMENT OF FISH AND GAME FOR PARTICIPATION ON, AND CONTRIBUTION TO, THE SOUTH SANDSTONE WATERSPREADING AND RECREATION PROJECT IN FALLON COUNTY, MONTANA; AND PROHIBITING EXPENDITURE OF SUCH MONEY UNTIL ALL FUNDS NECESSARY FOR COMPLETION OF PROJECT ARE AVAILABLE AND COMMITTED.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. The amounts of money hereinafter stated are appropriated from the indicated accounts and funds to the department of fish and game, for the biennium ending June 30, 1975, for participation in, and contribution to, the south sandstone waterspreading and recreation project in Fallon County, Montana, as follows:

- (1) for the construction of a multipurpose dam and related facilities the amount of ninety-one thousand dollars (\$91,000) from the fish and game earmarked revenue fund;
- (2) for the construction of a multi-purpose structure and related

recreation facilities in connection with the south sandstone project the amount of one hundred twenty-five thousand dollars (\$125,000) from the fish and game earmarked revenue fund.

Section 2. Moneys appropriated in section 1 of this act may not be spent until all funds necessary for completion of the project are available and committed.

Approved March 28, 1974

## HOUSE BILL NO. 746

AN ACT TO APPROPRIATE MONEYS TO VARIOUS STATE AGENCIES FOR THE BIENNIUM ENDING JUNE 30, 1975; PROVIDING FOR OTHER MATTERS RELATING TO THE APPROPRIATIONS; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. For the purposes of this act, unless otherwise stated:

(1) "Agency" includes all state offices, departments, divisions, boards, commissions, councils, committees, institutions, university units, and other entities or instrumentalities of state government.

(2) "Program" means a segment that includes a combination of planned efforts to provide a service.

(3) "Approved budget amendment" means approval by the governor, or his designated representative, or a request submitted through the budget bureau to:

(a) obtain financing for a new or expanded program from funds which were not available for consideration by the legislative assembly but which have become available from a source other than state's general fund; or

(b) transfer appropriations, including general fund appropriations, between programs within a state agency; or

(c) expend remaining balances of the first fiscal year appropriations, including general fund appropriations, during the second fiscal year of the biennium.

Section 2. The appropriations contained in this act are intended to provide only necessary and ordinary expenditures for the year for which the appropriations are made. Except for amounts subject to accrual at the end of each fiscal year, the unexpended balance of any appropriation shall revert to the fund from which it was appropriated. In case of necessity, an appropriation not expended during the first fiscal year of the biennium may be expended during the second fiscal year by approved budget amendment.

Section 3. The appropriations in this act are intended to provide for all expenditures for:



- (1) personal services;
- (2) all other ordinary and necessary expenditures for the operation of the agency and the program to which the appropriation applies;
- (3) repairs and maintenance, other than major alterations of existing buildings; and
- (4) the purchase or replacement of capital items other than expenditures for the construction, improvement, or furnishing of buildings or purchase of buildings or land unless specifically authorized.

Section 4. Financing for new or expanded programs from sources other than general fund may be made available by approved budget amendment.

Section 5. Each agency shall submit to the budget bureau, on or before July 1 of each fiscal year, an operational plan within the limits of appropriations which includes the position and salary of all officers and employees. The salary of the chief administrator of each agency shall be determined by the appointing authority. Informational copies of operational plan changes shall be submitted to the budget bureau for review.

Section 6. No new program may be established and no existing program may be expanded beyond the scope of the programs approved by the legislative assembly in the 1975 biennial budget, unless the new program or the program expansion and its method of financing is approved by the board of regents for the university system and the community colleges or the governor, or his designated representative for all other agencies or units under this act after presentation through the budget bureau.

Section 7. Transfers of appropriated funds between programs of an agency may be made only by an approved budget amendment.

Section 8. If the operation of a state agency is financed by an appropriation or appropriations from the general fund as well as by appropriation from other sources, the funds provided by appropriation from the general fund shall be decreased by the amount that the funds received from other sources exceeds the amount from other sources appropriated by the legislature in the 1975 biennial budget, provided that:

- (1) the decrease does not jeopardize the receipt of the funds to be received from other sources; and
- (2) this section shall not apply to any excess funds if they are to be expended for a new or expanded program approved by the governor, or his designated representative upon a request submitted to him through the budget bureau.

Section 9. When an agency receives federal funds as a reimbursement for the cost of administering a federal program and this cost was financed by a general fund appropriation, the federal funds shall be deposited into the general fund unless usage of the federal funds is restricted by federal provisions.

Section 10. The governor may reduce any appropriation by not more than fifteen percent (15%) except appropriations for:

- (1) payment of interest and retirement of the state debt;
- (2) operation of the legislature;
- (3) public schools;
- (4) the judiciary; or
- (5) salaries of public officers, during their term of office.

Section 11. In addition to the amounts specifically appropriated by this act, there is hereby appropriated to the Montana university system units all federal funds for existing programs, and those funds related to various supporting facilities and organizations such as auxiliary enterprises. All other moneys received from all other sources may be made available by an approved budget amendment.

Section 12. If any section, subsection, sentence, clause, or phrase of this act is for any reason held unconstitutional, such decision shall not affect the validity of the remaining portions of this act.

Section 13. (1) The following moneys are appropriated for the biennium ending June 30, 1975:

|                                                                                                                                                                                                                                                                                                                                                           | Fiscal Year<br>Ending<br>6/30/74 | Fiscal Year<br>Ending<br>6/30/75 |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------|----------------------------------|
| <b>DEPARTMENT OF EDUCATION</b>                                                                                                                                                                                                                                                                                                                            |                                  |                                  |
| Board of Public Education                                                                                                                                                                                                                                                                                                                                 |                                  |                                  |
| Board of Administration Program                                                                                                                                                                                                                                                                                                                           |                                  |                                  |
| From the General Fund                                                                                                                                                                                                                                                                                                                                     | 20,000                           | -0-                              |
| <b>BOARD OF REGENTS OF HIGHER EDUCATION</b>                                                                                                                                                                                                                                                                                                               |                                  |                                  |
| Indian Education Program                                                                                                                                                                                                                                                                                                                                  |                                  |                                  |
| From General Fund                                                                                                                                                                                                                                                                                                                                         | -0-                              | 37,500                           |
| Indian Culture Master Plan                                                                                                                                                                                                                                                                                                                                |                                  |                                  |
| From General Fund                                                                                                                                                                                                                                                                                                                                         | -0-                              | 24,000                           |
| Drug Education Program                                                                                                                                                                                                                                                                                                                                    |                                  |                                  |
| From General Fund                                                                                                                                                                                                                                                                                                                                         | -0-                              | 28,000                           |
| Student Assistance Program                                                                                                                                                                                                                                                                                                                                |                                  |                                  |
| From General Fund                                                                                                                                                                                                                                                                                                                                         |                                  |                                  |
| For WAMI Administration                                                                                                                                                                                                                                                                                                                                   | -0-                              | 15,000                           |
| For WICHE Student Payments                                                                                                                                                                                                                                                                                                                                | -0-                              | 65,000                           |
| For NDEA Matching Loan Funds                                                                                                                                                                                                                                                                                                                              | 25,000                           | -0-                              |
| For Rural Dentistry Program                                                                                                                                                                                                                                                                                                                               | 12,000                           | 32,000                           |
| The Commissioner of Higher Education shall devise procedures to assess financial need of students applying for the benefits provided by WICHE, WAHI, and rural Dentistry Program. These procedures shall be presented to the 44th Legislative Assembly in conjunction with the budget request for WICHE, WAMI, and Rural Dentistry Program support funds. |                                  |                                  |

|                                                                                                                             |         |        |
|-----------------------------------------------------------------------------------------------------------------------------|---------|--------|
| <b>Historical Society</b>                                                                                                   |         |        |
| <b>Bicentennial Commission Program</b>                                                                                      |         |        |
| From the General Fund                                                                                                       | -0-     | 20,000 |
| <b>Montana State University</b>                                                                                             |         |        |
| <b>Organized Research Program</b>                                                                                           |         |        |
| From the General Fund                                                                                                       |         |        |
| For a foreign trade study                                                                                                   | 46,000  | 81,600 |
| The appropriation of any portion of this money is contingent upon receipt of a like amount from federal or private sources. |         |        |
| <b>Institutional Support Program</b>                                                                                        |         |        |
| From the General Fund                                                                                                       |         |        |
| For compliance with the Civil Rights Act of 1964                                                                            | -0-     | 30,000 |
| <b>University of Montana</b>                                                                                                |         |        |
| <b>Institutional Support Program</b>                                                                                        |         |        |
| From the General Fund                                                                                                       |         |        |
| For compliance with the Civil Rights Act of 1964                                                                            | 167,345 | 60,128 |
| <b>UNIVERSITY OF MONTANA</b>                                                                                                |         |        |
| <b>Academic Support Program</b>                                                                                             |         |        |
| From the General Fund to be used only for the purposes described in subsection (2) of this section                          | -0-     | 61,000 |
| <b>MONTANA STATE UNIVERSITY</b>                                                                                             |         |        |
| <b>Academic Support Program</b>                                                                                             |         |        |
| From the General Fund to be used only for the purposes described in subsection (2) of this section                          | -0-     | 55,000 |
| <b>MONTANA COLLEGE OF MINERAL SCIENCE AND TECHNOLOGY</b>                                                                    |         |        |
| <b>Academic Support Program</b>                                                                                             |         |        |
| From the General Fund to be used only for the purposes described in subsection (2) of this section                          | -0-     | 5,000  |
| <b>WESTERN MONTANA COLLEGE</b>                                                                                              |         |        |
| <b>Academic Support Program</b>                                                                                             |         |        |
| From the General Fund to be used only for the purposes described in subsection (2) of this section                          | -0-     | 8,500  |
| <b>EASTERN MONTANA COLLEGE</b>                                                                                              |         |        |
| <b>Academic Support Program</b>                                                                                             |         |        |
| From the General Fund to be used only for the purposes described in subsection (2) of this section                          | -0-     | 13,000 |

## NORTHERN MONTANA COLLEGE

## Academic Support Program

From the General Fund to be  
used only for the purposes  
described in subsection (2) of  
this section

-0- 11,000

(2) The appropriations made by subsection (1) of this section to the academic support programs of the units of the university system are to be used by the libraries of the various units only for the acquisition of printed, typewritten, handwritten, mimeographed or processed works which are bound or portfolioed, hard bound or paper bound and which can be classified, catalogued or otherwise prepared for library use, including bound periodical volumes and non-periodical government documents.

Section 14. The provisions set forth in this section are limitations on the appropriations made in this act, provided, however, that these limitations do not apply to the distribution of public funds under the superintendent of public instruction. It is the purpose of the legislature in enacting this bill only to appropriate funds and to restrict and limit by its provisions the amount and conditions under which the appropriations can be expended. Except as otherwise provided in this act, the expenditures of appropriations are hereby subject to the following general and specific provisions:

(1) All expenditures of funds appropriated by this act for purpose of travel, transportation, and vacation and sick leave are subject to the provisions of law expressed in Title 59, R.C.M. 1947.

(2) All expenditures of funds appropriated by this act for the purchase of property, materials and supplies are subject to the provisions of law expressed in Title 82, chapter 19, R.C.M. 1947.

(3) All expenditures of funds appropriated by this act shall be made in accordance with the provisions of section 82-109, R.C.M. 1947, which specifies that expenditures shall be applied against nongeneral fund moneys before general fund moneys.

(4) All moneys collected or received by agencies subject to this act from any source whatsoever, including federal grants for research and operations, shall be deposited in the state treasury pursuant to the provisions of Title 79, R.C.M. 1947, except that the department of administration may, pursuant to section 79-603, R.C.M. 1947, permit any agency subject to this act to retain in its possession moneys that would otherwise be deposited in the state treasury.

(5) All expenditures of funds appropriated by this act shall be reported and accounted for in accordance with procedures and systems established by the department of administration pursuant to section 82-110, R.C.M. 1947.

Section 15. This act is effective upon passage and approval.

Approved March 28, 1974

## HOUSE BILL NO. 747

AN ACT TO APPROPRIATE MONEYS TO VARIOUS STATE AGEN-

**CIES FOR THE BIENNIUM ENDING JUNE 30, 1975; PROVIDING FOR OTHER MATTERS RELATING TO THE APPROPRIATIONS; AND PROVIDING AN EFFECTIVE DATE.**

*Be it enacted by the Legislature of the State of Montana:*

Section 1. For the purposes of this act, unless otherwise stated:

(1) "Agency" includes all state offices, departments, divisions, boards, commissions, councils, committees, institutions, university units, and other entities or instrumentalities of state government.

(2) "Program" means a segment that includes a combination of planned efforts to provide a service.

(3) "Approved budget amendment" means approval by the governor, or his designated representative, of a request submitted through the budget bureau to:

(a) obtain financing for a new or expanded program from funds which were not available for consideration by the legislative assembly but which have become available from a source other than state's general fund; or

(b) transfer appropriations, including general fund appropriations, between programs within a state agency; or

(c) expend remaining balances of the first fiscal year appropriations, including general fund appropriations, during the second fiscal year of the biennium.

Section 2. The appropriations contained in this act are intended to provide only necessary and ordinary expenditures for the year for which the appropriations are made. Except for amounts subject to accrual at the end of each fiscal year, the unexpended balance of any appropriation shall revert to the fund from which it was appropriated. In case of necessity, an appropriation not expended during the first fiscal year of the biennium may be expended during the second fiscal year by approved budget amendment.

Section 3. The appropriations in this act are intended to provide for all expenditures for:

(1) personal services;

(2) all other ordinary and necessary expenditures for the operation of the agency and the program to which the appropriation applies;

(3) repairs and maintenance, other than major alterations of existing buildings; and

(4) the purchase or replacement of capital items other than expenditures for the construction, improvement, or furnishing of buildings or purchase of buildings or land unless specifically authorized.

Section 4. Financing for new or expanded programs from sources other than general fund may be made available by approved budget amendment.

Section 5. Each agency shall submit to the budget bureau, on or before July 1 of each fiscal year, an operational plan within the limits of appropriations which includes the position and salary of all officers and employees. The salary of the chief administrator of each agency shall be determined by the appointing authority. Informational copies of operational plan changes shall be submitted to the budget bureau for review.

Section 6. No new program may be established and no existing program may be expanded beyond the scope of the programs approved by the legislative assembly in the 1975 biennial budget, unless the new program or the program expansion and its method of financing is approved by the governor, or his designated representative after presentation through the budget bureau.

Section 7. Transfers of appropriated funds between programs of an agency may be made only by an approved budget amendment.

Section 8. If the operation of a state agency is financed by an appropriation or appropriations from the general fund as well as by appropriation from other sources, the funds provided by appropriation from the general fund shall be decreased by the amount that the funds received from other sources exceeds the amount from other sources appropriated by the legislature in the 1975 biennial budget, provided that:

- (1) the decrease does not jeopardize the receipt of the funds to be received from other sources; and
- (2) this section shall not apply to any excess funds if they are to be expended for a new or expanded program approved by the governor, or his designated representative upon a request submitted to him through the budget bureau.

Section 9. When an agency receives federal funds as a reimbursement for the cost of administering a federal program and this cost was financed by a general fund appropriation, the federal funds shall be deposited into the general fund unless usage of the federal funds is restricted by federal provisions.

Section 10. The governor may reduce any appropriation by not more than fifteen percent (15%) except appropriations for:

- (1) payment of interest and retirement of the state debt;
- (2) operation of the legislature;
- (3) public schools;
- (4) the judiciary; or
- (5) salaries of public officers, during their term of office.

Section 11. If any section, subsection, sentence, clause, or phrase of this act is for any reason held unconstitutional, such decision shall not affect the validity of the remaining portions of this act.

Section 12. The following moneys are appropriated for the biennium ending June 30, 1975:

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Fiscal Year<br>Ending<br><u>6/30/74</u> | Fiscal Year<br>Ending<br><u>6/30/75</u> |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------|-----------------------------------------|
| <b>DEPARTMENT OF ADMINISTRATION</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                         |                                         |
| Accounting Program                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                         |                                         |
| From General Fund                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                         |                                         |
| For data processing                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | 117,500                                 | 125,000                                 |
| For one additional<br>senior accountant                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | 4,875                                   | 15,356                                  |
| General Services Program                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                         |                                         |
| From General Fund                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | 5,300                                   | 26,700                                  |
| This appropriation is intended to rent space<br>for these agencies or space for agencies these<br>agencies displace:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                         |                                         |
| <b>ENVIRONMENTAL QUALITY COUNCIL,<br/>PURCHASING BUREAU.</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                         |                                         |
| Purchasing Bureau                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                         |                                         |
| From General Fund                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | -0-                                     | 15,000                                  |
| This appropriation is intended to fund 1.5<br>Full Time Equivalents to implement the Small<br>Business Purchasing Act (SB 504).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                         |                                         |
| Budget Program                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                         |                                         |
| From General Fund                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | 1,097,000                               | 502,000                                 |
| From Earmarked Revenue Fund                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | 1,224,000                               | 557,600                                 |
| From Federal and Private<br>Revenue Fund                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | 1,175,000                               | 534,600                                 |
| From Revolving Fund                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | 100,000                                 | 46,000                                  |
| The purpose of this appropriation is to provide a general state employee<br>salary adjustment effective January 1, 1974. All state employees, with<br>the exception of those employees whose salaries are set by law, are to be<br>included. All state employees shall receive a salary increase of thirty<br>dollars (\$30) per month, prorated for less than full-time employment. In<br>addition, all state employees shall receive a two percent (2%) salary<br>increase as of July 1, 1974. This salary adjustment shall apply only for<br>employees of record as of the date of passage and approval of this act.<br>Administration of the appropriation is assigned to the budget bureau,<br>department of administration, for distribution. All distribution calcu-<br>lations will be based on operational plans submitted by offices or depart-<br>ments on file with the budget bureau as of December 1, 1973, for<br>executive branch agencies, and salary information available as of Decem-<br>ber 1, 1973, for legislative and judicial branch agencies. This general<br>state employee salary adjustment is intended in lieu of all forthcoming,<br>broad-based salary increases in the 1975 biennium. |                                         |                                         |
| From the General Fund                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | -0-                                     | 187,000                                 |
| To fund provisions of SB 703 should it be enacted into law, dealing with<br>salaries of elected officials.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                         |                                         |
| Intergovernmental Personnel Program                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                         |                                         |
| From General Fund                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | 150,000                                 | 250,000                                 |

This appropriation authorizes approximately 24 total Full Time Equivalents in FY 74, and 30 total FTE's in FY 75.

|                            |        |        |
|----------------------------|--------|--------|
| Management Systems Program |        |        |
| From General Fund          | 19,574 | 57,783 |

## DEPARTMENT OF MILITARY AFFAIRS

|                                                                                                                                                |       |        |
|------------------------------------------------------------------------------------------------------------------------------------------------|-------|--------|
| Civil Defense Program                                                                                                                          |       |        |
| From General Fund                                                                                                                              | -0-   | 32,680 |
| This appropriation will replace funds transferred from the FY 75 Civil Defense appropriation to implement the Fuel Allocation Program in FY 74 |       |        |
| Fuel Allocation Program                                                                                                                        |       |        |
| From General Fund                                                                                                                              | 2,768 | 86,186 |
| This appropriation intends to fund an energy conservation coordinator and continues seven (7) other Full Time Equivalents through FY 75.       |       |        |

## DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

|                                                                                                                                                               |     |           |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|-----------|
| Economic Assistance Program                                                                                                                                   |     |           |
| From General Fund                                                                                                                                             | -0- | 3,500,000 |
| This appropriation intends to fund SB 678 which eliminates county participation in federal medical assistance programs and lowers the maximum poor fund levy. |     |           |
| From General Fund                                                                                                                                             | -0- | 50,000    |
| This appropriation provides the means to increase medical assistance reimbursements to nursing facilities.                                                    |     |           |
| From General Fund                                                                                                                                             | -0- | 50,000    |
| This appropriation provides the means to increase by approximately 2 percent grants to recipients of Aid to Families with Dependent Children.                 |     |           |

## DEPARTMENT OF JUSTICE

|                                                                                   |        |        |
|-----------------------------------------------------------------------------------|--------|--------|
| Patrol Operations Program                                                         |        |        |
| From General Fund                                                                 | 31,591 | 63,184 |
| From Earmarked Revenue                                                            |        |        |
| Fund Highway Account                                                              | 10,531 | 21,061 |
| This appropriation intends to fund higher petroleum costs for vehicle operations. |        |        |

Section 13. This act is effective upon passage and approval.

Approved March 27, 1974



**HOUSE BILL NO. 748**

AN ACT TO APPROPRIATE MONEYS TO VARIOUS STATE AGENCIES FOR THE BIENNIUM ENDING JUNE 30, 1975; PROVIDING FOR OTHER MATTERS RELATING TO THE APPROPRIATIONS; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. For the purposes of this act; unless otherwise stated:

(1) "Agency" includes all state offices, departments, divisions, boards, commissions, councils, committees, institutions, university units, and other entities or instrumentalities of state government.

(2) "Program" means a segment that includes a combination of planned efforts to provide a service.

(3) "Approved budget amendment" means approval by the governor, or his designated representative, of a request submitted through the budget bureau to:

(a) obtain financing for a new or expanded program from funds which were not available for consideration by the legislative assembly but which have become available from a source other than state's general fund; or

(b) transfer appropriations, including general fund appropriations, between programs within a state agency; or

(c) expend remaining balances of the first fiscal year appropriations, including general fund appropriations, during the second fiscal year of the biennium.

Section 2. The appropriations contained in this act are intended to provide only necessary and ordinary expenditures for the year for which the appropriations are made. Except for amounts subject to accrual at the end of each fiscal year, the unexpended balance of any appropriation shall revert to the fund from which it was appropriated. In case of necessity, an appropriation not expended during the first fiscal year of the biennium may be expended during the second fiscal year by approved budget amendment.

Section 3. The appropriations in this act are intended to provide for all expenditures for:

(1) personal services;

(2) all other ordinary and necessary expenditures for the operation of the agency and the program to which the appropriation applies;

(3) repairs and maintenance, other than major alterations of existing buildings; and

(4) the purchase or replacement of capital items other than expenditures for the construction, improvement, or furnishing of buildings or purchase of buildings or land unless specifically authorized.

Section 4. Financing for new or expanded programs from sources other than general fund may be made available by approved budget amendment.

Section 5. Each agency shall submit to the budget bureau, on or before July 1 of each fiscal year, an operational plan within the limits of appropriations which includes the position and salary of all officers and employees. The salary of the chief administrator of each agency shall be determined by the appointing authority. Informational copies of operational plan changes shall be submitted to the budget bureau for review.

Section 6. No new program may be established and no existing program may be expanded beyond the scope of the programs approved by the legislative assembly in the 1975 biennial budget, unless the new program or the program expansion and its method of financing is approved by the governor, or his designated representative after presentation through the budget bureau.

Section 7. Transfers of appropriated funds between programs of an agency may be made only by an approved budget amendment.

Section 8. If the operation of a state agency is financed by an appropriation or appropriations from the general fund as well as by appropriation from other sources, the funds provided by appropriation from the general fund shall be decreased by the amount that the funds received from other sources exceeds the amount from other sources appropriated by the legislature in the 1975 biennial budget, provided that:

(1) the decrease does not jeopardize the receipt of the funds to be received from other sources; and

(2) this section shall not apply to any excess funds if they are to be expended for a new or expanded program approved by the governor, or his designated representative upon a request submitted to him through the budget bureau.

Section 9. When an agency receives federal funds as a reimbursement for the cost of administering a federal program and this cost was financed by a general fund appropriation, the federal funds shall be deposited into the general fund unless usage of the federal funds is restricted by federal provisions.

Section 10. The governor may reduce any appropriation by not more than fifteen percent (15%) except appropriations for:

- (1) payment of interest and retirement of the state debt;
- (2) operation of the legislature;
- (3) public schools;
- (4) the judiciary; or
- (5) salaries of public officers, during their term of office.

Section 11. If any section, subsection, sentence, clause, or phrase of this act is for any reason held unconstitutional, such decision shall not affect the validity of the remaining portions of this act.

Section 12. The following moneys are appropriated for the biennium ending June 30, 1975:

|                                                                                                                                                                                                                                                                                                                                                                                                                    | Fiscal<br>Year<br>Ending<br>6/30/74 | Fiscal<br>Year<br>Ending<br>6/30/75 |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------|-------------------------------------|
| <b>DEPARTMENT OF HEALTH &amp;<br/>ENVIRONMENTAL SCIENCES</b>                                                                                                                                                                                                                                                                                                                                                       |                                     |                                     |
| Health Care Facilities Program                                                                                                                                                                                                                                                                                                                                                                                     |                                     |                                     |
| From General Fund                                                                                                                                                                                                                                                                                                                                                                                                  | -0-                                 | 100,000                             |
| This general fund appropriation may be expended only to match federal revenue funds authorized by the U.S. Department of Health, Education and Welfare under Title XII of the Public Health Service Act. If the federal matching money does not become available, then the total \$100,000 general fund appropriation shall revert. It may not be transferred to another program, nor expended for other purposes. |                                     |                                     |
| Alcohol Services Division                                                                                                                                                                                                                                                                                                                                                                                          |                                     |                                     |
| From General Fund                                                                                                                                                                                                                                                                                                                                                                                                  | -0-                                 | 500,000                             |
| Before any of the funds can be expended or granted to local programs the local authority must provide one-third (1/3) matching funds.                                                                                                                                                                                                                                                                              |                                     |                                     |
| Environmental Health Program                                                                                                                                                                                                                                                                                                                                                                                       |                                     |                                     |
| From General Fund                                                                                                                                                                                                                                                                                                                                                                                                  | 55,000                              | 45,000                              |
| <b>DEPARTMENT OF LABOR<br/>&amp; INDUSTRY</b>                                                                                                                                                                                                                                                                                                                                                                      |                                     |                                     |
| Labor Standards Division                                                                                                                                                                                                                                                                                                                                                                                           |                                     |                                     |
| Personnel Appeals Board Program                                                                                                                                                                                                                                                                                                                                                                                    |                                     |                                     |
| From General Fund                                                                                                                                                                                                                                                                                                                                                                                                  | 55,000                              | 105,000                             |
| Workmen's Compensation Silicosis Benefits                                                                                                                                                                                                                                                                                                                                                                          |                                     |                                     |
| From General Fund                                                                                                                                                                                                                                                                                                                                                                                                  | 10,163                              | 48,808                              |
| <b>DEPARTMENT OF REVENUE</b>                                                                                                                                                                                                                                                                                                                                                                                       |                                     |                                     |
| Property Valuation Program                                                                                                                                                                                                                                                                                                                                                                                         |                                     |                                     |
| From General Fund                                                                                                                                                                                                                                                                                                                                                                                                  |                                     |                                     |
| For Operations                                                                                                                                                                                                                                                                                                                                                                                                     | 1,034,721                           | 4,622,021                           |
| Income-Inheritance Tax Program                                                                                                                                                                                                                                                                                                                                                                                     |                                     |                                     |
| From General Fund                                                                                                                                                                                                                                                                                                                                                                                                  |                                     |                                     |
| For Operations                                                                                                                                                                                                                                                                                                                                                                                                     | -0-                                 | 52,170                              |
| For Judges' Travel                                                                                                                                                                                                                                                                                                                                                                                                 | -0-                                 | 2,000                               |
| Audit and Accounting Program                                                                                                                                                                                                                                                                                                                                                                                       |                                     |                                     |
| From General Fund                                                                                                                                                                                                                                                                                                                                                                                                  | -0-                                 | 30,000                              |
| Legal and Investigation Program                                                                                                                                                                                                                                                                                                                                                                                    |                                     |                                     |
| From General Fund                                                                                                                                                                                                                                                                                                                                                                                                  | -0-                                 | 56,872                              |
| <b>DEPARTMENT OF NATURAL<br/>RESOURCES AND CONSERVATION</b>                                                                                                                                                                                                                                                                                                                                                        |                                     |                                     |
| Fire Protection Program                                                                                                                                                                                                                                                                                                                                                                                            |                                     |                                     |
| From General Fund                                                                                                                                                                                                                                                                                                                                                                                                  | 252,083                             | 626,504                             |
| Water Rights Program                                                                                                                                                                                                                                                                                                                                                                                               |                                     |                                     |
| From General Fund                                                                                                                                                                                                                                                                                                                                                                                                  | 50,430                              | 249,428                             |

|                                   |       |        |
|-----------------------------------|-------|--------|
| Forest Management Program         |       |        |
| For Evaluation and Study of       |       |        |
| Range Management and Alternatives |       |        |
| on State Forest Lands             |       |        |
| From General Fund                 | 5,000 | 10,000 |

**DEPARTMENT OF FISH AND GAME**

|                                     |         |     |
|-------------------------------------|---------|-----|
| Parks and Recreation Program        |         |     |
| From Federal & Private Revenue Fund |         |     |
| Recreation Account                  |         |     |
| For Land Acquisition                | 500,000 | -0- |
| From Earmarked Revenue Fund         |         |     |
| Fish and Game Account               |         |     |
| For Land Acquisition—Fishing        |         |     |
| and Recreational                    |         |     |
| Access                              | 500,000 | -0- |

Section 13. This act is effective upon passage and approval.

Approved March 28, 1974

**HOUSE BILL NO. 891**

**AN ACT TO APPROPRIATE SUPPLEMENTAL MONEYS TO THE  
DEPARTMENT OF PUBLIC SERVICE REGULATION; AND PROVID-  
ING FOR OTHER MATTERS RELATED TO THE APPROPRIATION;  
AND PROVIDING AN EFFECTIVE DATE.**

*Be it enacted by the Legislature of the State of Montana:*

Section 1. For the purposes of this act, unless otherwise stated:

(1) "Agency" includes all state offices, departments, divisions, boards, commissions, councils, committees, institutions, university units, and other entities or instrumentalities of state government.

(2) "Program" means a segment that includes a combination of planned efforts to provide a service.

(3) "Approved budget amendment" means approval by the governor, or his designated representative, of a request submitted through the budget bureau for executive branch agencies; approval by the respective legislative committees for legislative branch agencies, to:

(a) obtain financing for a new or expanded program from funds which were not available for consideration by the legislative assembly but which have become available from a source other than state's general fund; or

(b) transfer appropriations, including general fund appropriations, between programs within a state agency; or

(c) expend remaining balances of the first fiscal year appropriations, including general fund appropriations, during the second fiscal year of the biennium.

Section 2. The appropriations contained in this act are intended to provide only necessary and ordinary expenditures for the year for which the appropriations are made. Except for amounts subject to accrual at the end of each fiscal year, the unexpended balance of any appropriation shall revert to the fund from which it was appropriated. In case of necessity, an appropriation not expended during the first fiscal year of the biennium may be expended during the second fiscal year by approved budget amendment.

Section 3. The appropriations in this act are intended to provide for all expenditures for:

(1) the full time service of three (3) auditors to assist the administrator of the utility division and to assist the administrator of the transportation division of the commission; one (1) engineer to assist the administrator of the utility division of the commission; the full time service of one (1) court reporter; and the full time service of one (1) legal stenographer;

(2) all other ordinary and necessary expenditures for the operation of the agency and the program to which the appropriation applies;

(3) repairs and maintenance, other than major alterations of existing buildings; and

(4) the purchase or replacement of capital items other than expenditures for the construction, improvement, or furnishing of buildings or purchase of buildings or land unless specifically authorized.

Section 4. Financing for new or expanded programs from sources other than general fund may be made available by approved budget amendment.

Section 5. Each executive branch agency shall submit to the budget bureau, on or before July 1 of each fiscal year, an operational plan within the limits of appropriations which includes the position and salary of all officers and employees. The salary of the chief administrator of each agency shall be determined by the appointing authority. Informational copies of operational plan changes shall be submitted to the budget bureau for review.

Section 6. No new program may be established and no existing program may be expanded beyond the scope of the programs approved by the legislative assembly in the 1975 biennial budget, unless the new program or the program expansion and its method of financing is approved by means of an approved budget amendment.

Section 7. Transfers of appropriated funds between programs of an agency may be made only by an approved budget amendment.

Section 8. If the operation of a state agency is financed by an appropriation or appropriations from the general fund as well as by appropriation from other sources, the funds provided by appropriation from the general fund shall be decreased by the amount that the funds received from other sources exceeds the amount from other sources appropriated by the legislature in the 1975 biennial budget, provided that:

(1) the decrease does not jeopardize the receipt of the funds to be received from other sources; and

(2) this section shall not apply to any excess funds if they are to be expended for a new or expanded program approved by means of an approved budget amendment.

Section 9. When an agency receives federal funds as reimbursement for the cost of administering a federal program and this cost was financed by a general fund appropriation, the federal funds shall be deposited into the general fund unless usage of the federal fund is restricted by federal provisions.

Section 10. The governor may reduce any appropriation by not more than fifteen percent (15%) except appropriations for:

- (1) payment of interest and retirement of the state debt;
- (2) operation of the legislature;
- (3) public schools;
- (4) the judiciary; or
- (5) salaries of public officers, during their term of office.

Section 11. In addition to the amounts specifically appropriated by this act, there is hereby appropriated to the legislative auditor for the legislative audit program that amount that state agency heads agree to provide for audits from their available non-general fund resources.

Section 12. If any section, subsection, sentence, clause, or phrase of this act is for any reason held unconstitutional, such decision shall not effect the validity of the remaining portions of this act.

Section 13. The following moneys are appropriated for the biennium ending June 30, 1975:

|                              | FISCAL YEAR<br>ENDING<br><u>6/30/74</u> | FISCAL YEAR<br>ENDING<br><u>6/30/75</u> |
|------------------------------|-----------------------------------------|-----------------------------------------|
| Department of Public Service |                                         |                                         |
| Regulation                   |                                         |                                         |
| Public Service Regulation    |                                         |                                         |
| Program                      |                                         |                                         |
| From the General Fund        | 0                                       | \$ 71,925                               |

Section 14. This act is effective on passage and approval.

Approved March 28, 1974

## HOUSE BILL NO. 931

AN ACT TO APPROPRIATE TWO HUNDRED THOUSAND DOLLARS (\$200,000) TO THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES FROM THE GENERAL FUND FOR THE PURCHASE OF SHELTERED EMPLOYMENT SERVICES AND/OR WORK ACTIVITY SERVICES FOR SEVERELY HANDICAPPED

PERSONS FOR THE PERIOD ENDING JUNE 30, 1975; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is appropriated to the department of social and rehabilitation services from the general fund the sum of two hundred thousand dollars (\$200,000) for the purchase of sheltered employment services and/or work activity services for severely handicapped persons for the period ending June 30, 1975.

Section 2. This act is effective on passage and approval.

Approved March 28, 1974

### **HOUSE BILL NO. 987**

AN ACT TO APPROPRIATE MONEY FOR THE PURPOSE OF PUBLISHING TWO (2) UNPUBLISHED LEGISLATIVE JOURNALS.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is appropriated from the general fund to the office of the secretary of the state the sum of five thousand dollars (\$5000) for the purpose of preparing and publishing the first territorial house journal and the fifteenth regular session and extraordinary session territorial house journal of the state of Montana.

Section 2. All moneys received from sources other than this appropriation to carry out the purposes of this act shall be deposited in the general fund.

Approved February 27, 1974

### **HOUSE BILL NO. 1111**

AN ACT APPROPRIATING FIFTY THOUSAND DOLLARS (\$50,000) TO THE STATE BICENTENNIAL COMMISSION FOR DISTRIBUTION TO COUNTY BICENTENNIAL COMMITTEES ON THE BASIS OF NEED; MAKING THE APPROPRIATION SUBJECT TO THE RECEIPT OF FEDERAL MATCHING FUNDS; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is appropriated, subject to the receipt of federal

matching funds, the sum of fifty thousand dollars (\$50,000) to the state bicentennial commission for the period ending June 30, 1975 for distribution to county bicentennial committees on the basis of need.

Section 2. This act is effective on its passage and approval.

Approved March 28, 1974

## HOUSE BILL NO. 1116

AN ACT APPROPRIATING THE SUM OF TWO MILLION, SIX HUNDRED THOUSAND DOLLARS (\$2,600,000) FROM THE GENERAL FUND TO THE BOARD OF EXAMINERS FOR THE PURPOSE OF PAYMENT OF AN HONORARIUM TO RESIDENTS OF MONTANA WHO SERVED IN THE MILITARY SERVICES IN THE VIETNAM AREA DURING THE VIETNAM WAR.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is appropriated from the general fund the sum of two million six hundred thousand dollars (\$2,600,000) to the board of examiners for the purpose of administering the act relating to payments of an honorarium to each resident of Montana who served in the military service in the Vietnam area during the Vietnam war and for payment of the honorariums due pursuant to such act. Any moneys remaining after the payment of all claims pursuant to the act establishing the honorarium shall be returned to the general fund.

Approved March 28, 1974

## HOUSE BILL NO. 1117

AN ACT TO APPROPRIATE MONEY FOR CAPITAL PROJECTS FOR THE BIENNIUM ENDING JUNE 30, 1975 AND PROVIDING FOR OTHER MATTERS RELATING TO THE APPROPRIATIONS.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. For the purposes of this act, unless otherwise stated:

(1) "Agency" includes all state offices, departments, divisions, boards, commissions, councils, committees, university system, board of institutions and other entities or instrumentalities of state government.

(2) "Capital project" means acquisition of land or improvements, planning, capital construction, renovation, furnishing and major repair projects authorized in this act.



(3) "Approved budget amendment" means approval by the director, department of administration, of a request submitted through the construction and maintenance division to:

(a) obtain financing for a new or expanded project from funds which were not available for consideration by the legislature, but which have become available; or

(b) transfer excess funds appropriated to a capital project within an agency to increase the appropriations of another capital project within that agency.

Section 2. No new capital project may be established and no existing capital project may be expanded beyond the scope of the project as approved by the legislature in the 1975 biennial budget unless the new capital project or the capital project expansion is authorized by an approved budget amendment.

Section 3. If a capital project is jointly financed by an appropriation or appropriations from state sources as well as by appropriations from other sources, the funds provided by appropriation from state sources shall be decreased by the amount that the funds received from other sources exceeds the amount from other sources appropriated by the legislature in the 1975 biennial budget; provided that:

(1) The decrease does not jeopardize the receipt of the funds to be received from other sources; and

(2) This section shall not apply to any excess funds if they are to be expended for a new or expanded project by the director, department of administration, upon request submitted to him through the construction and maintenance division.

Section 4. When an agency receives federal funds as a reimbursement for the cost of administering a federal program and this cost was financed by an appropriation from state funds, the federal funds shall be deposited into the state fund from which the disbursements were originally made, unless usage of the federal funds is restricted by federal provisions.

Section 5. Notwithstanding any other provisions of law, the remaining balances on capital projects authorized by the legislature are hereby reappropriated until June 30, 1975, for the purposes for which originally appropriated.

Section 6. If any section, subsection, sentence, clause, or phrase of this act is for any reason held unconstitutional or void, such decision shall not affect the validity of the remaining portions of this act.

Section 7. The following money is appropriated from indicated accounts and funds to the director, department of administration, for the biennium ending June 30, 1975, for the indicated capital project:

|                                 |          |
|---------------------------------|----------|
| Education, Department of        |          |
| Agricultural Experiment Station |          |
| From the earmarked Revenue      |          |
| Fund Experiment Station Account |          |
| Additional funds to construct   |          |
| feed mixing plant               | \$25,000 |

Approved March 28, 1974

## HOUSE BILL NO. 1119

AN ACT TO APPROPRIATE SIXTY THOUSAND DOLLARS (\$60,000) TO THE PINE HILLS SCHOOL FOR PAYING THE STATE'S PORTION OF THE LOCAL SHARE OF THE CARBON HILL WATERSHED PROJECT; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is appropriated sixty thousand dollars (\$60,000) from the general fund to the pine hills school to pay the state's portion of the local share of the carbon hill watershed project.

Section 2. If the electors in the benefited area have not voted to pay the local share of the cost of the carbon hill watershed project, all money appropriated as the state's share, including the ninety five thousand dollars (\$95,000) from the long range building fund, shall revert to the general fund at the end of the biennium.

Section 3. This act is effective on its passage and approval.

Approved March 28, 1974

## HOUSE BILL NO. 1121

AN ACT TO APPROPRIATE TWO HUNDRED TWENTY-NINE THOUSAND SIX HUNDRED DOLLARS (\$229,600) FROM THE GENERAL FUND TO THE DEPARTMENT OF INTERGOVERNMENTAL RELATIONS TO BE DISTRIBUTED TO MUNICIPALITIES AND COUNTIES FOR SUPPORT OF LOCAL GOVERNMENT STUDY COMMISSIONS; AND PROVIDING FOR AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. The sum of two hundred twenty-nine thousand six hundred dollars (\$229,600) is hereby appropriated for the biennium ending June 30, 1975, from the general fund to the department of intergovernmental relations to be distributed to the treasurers of incorporated municipalities and counties for support of local government study commissions. On or before September 1, 1974, the department of intergovernmental relations shall distribute the appropriated funds to the treasurers of incorporated municipalities and counties according to the following table:

## Population of County

| <u>(1970 Census)</u> | <u>Grant</u>        |
|----------------------|---------------------|
| 1,999 or less        | \$ 500 per county   |
| 2,000 to 4,999       | \$ 1,000 per county |
| 5,000 to 8,999       | \$ 2,000 per county |
| 9,000 to 19,999      | \$ 4,000 per county |
| 20,000 and over      | \$ 5,000 per county |

## Population of Municipality

| <u>(1970 Census)</u> | <u>Grant</u>              |
|----------------------|---------------------------|
| 499 or less          | \$ 100 per municipality   |
| 500 to 999           | \$ 200 per municipality   |
| 1,000 to 1,999       | \$ 400 per municipality   |
| 2,000 to 3,999       | \$ 1,000 per municipality |
| 4,000 to 8,999       | \$ 2,000 per municipality |
| 9,000 to 17,999      | \$ 3,000 per municipality |
| 18,000 and over      | \$ 5,000 per municipality |

Section 2. This act is effective upon passage and approval.

Approved March 28, 1974

**HOUSE BILL NO. 1122**

AN ACT APPROPRIATING MONEY TO THE INDIAN AFFAIRS UNIT OF THE DEPARTMENT OF INTERGOVERNMENTAL RELATIONS FROM THE GENERAL FUND FOR ADDITIONAL STAFFING AND ADMINISTRATION FOR THE BIENNIUM ENDING JUNE 30, 1975.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is appropriated fourteen thousand seven hundred fifty dollars (\$14,750) from the general fund to the Indian affairs unit of the department of intergovernmental relations for additional staffing and administration for the biennium ending June 30, 1975 as follows:

|                                  |          |
|----------------------------------|----------|
| One (1) administrative assistant | \$10,000 |
| Part-time secretarial assistance | 2,000    |
| Fringe benefits                  | 1,550    |
| Travel                           | 1,200    |

Approved March 26, 1974

**HOUSE BILL NO. 1128**

AN ACT APPROPRIATING ONE HUNDRED NINE THOUSAND SIX

HUNDRED FORTY DOLLARS (\$109,640) FROM THE GENERAL FUND TO THE OFFICE OF THE LEGISLATIVE AUDITOR FOR THE BIENNIUM ENDING JUNE 30, 1975 FOR THE CREATION AND STAFFING OF A LEGISLATIVE FISCAL ANALYSIS PROGRAM WITHIN THE OFFICE OF THE LEGISLATIVE AUDITOR.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is appropriated one hundred nine thousand six hundred forty dollars (\$109,640) from the general fund to the office of the legislative auditor for the biennium ending June 30, 1975 for the creation and staffing of a legislative fiscal analysis program within the office of the legislative auditor.

Section 2. The legislative fiscal analysis program will carry out the functions of working with the legislature while in session, developing post session reports on each program appropriation, analyzing effects of the executive budget request in advance of the legislative session, and other related functions.

Approved March 28, 1974

### **HOUSE BILL NO. 1129**

AN ACT APPROPRIATING EIGHT THOUSAND FIVE HUNDRED DOLLARS (\$8,500) TO THE MONTANA HISTORICAL SOCIETY FOR THE SERVICES OF A PHOTO-ARCHIVIST.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is appropriated from the general fund the sum of eight thousand five hundred dollars (\$8,500) to the Montana Historical Society, Library Archives program, for the personal services of a photo-archivist for the fiscal year ending on June 30, 1975.

Approved March 26, 1974

### **HOUSE BILL NO. 1130**

AN ACT APPROPRIATING ONE HUNDRED NINETY THOUSAND SEVEN HUNDRED TWENTY DOLLARS (\$190,720) FROM THE GENERAL FUND TO THE DIVISION OF WORKMEN'S COMPENSATION OF THE DEPARTMENT OF LABOR AND INDUSTRY FOR BENEFITS GRANTED UNDER SECTION 92-704.1, R.C.M. 1947.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is appropriated one hundred ninety thousand seven

hundred twenty dollars (\$190,720) from the general fund to the division of workmen's compensation of the department of labor and industry for benefits granted under section 92-704.1, R.C.M. 1947.

Approved March 26, 1974

### SENATE BILL NO. 493

AN ACT TO APPROPRIATE TO THE LEGISLATIVE COUNCIL THE SUM OF TWENTY-FIVE THOUSAND DOLLARS (\$25,000), IN ORDER TO OBTAIN ACTUARIAL VALUATION OF THE POLICE OFFICERS', FIREMEN'S, GAME WARDENS', HIGHWAY PATROLMEN'S AND SHERIFFS' RETIREMENT PROGRAM; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is hereby appropriated to the legislative council the sum of twenty-five thousand dollars (\$25,000), fifteen thousand dollars (\$15,000) to come from the general fund and ten thousand dollars (\$10,000) from the earmarked revenue funds of the public employees' retirement system of the department of administration. These monies shall be used to secure actuarial valuations of the municipal police officers' reserve retirement funds established under section 11-1823, R.C.M. 1947, the firemen's relief association disability and pension funds established under section 11-1910, R.C.M. 1947, and to secure an actuarial valuation of the consolidation of the game wardens' retirement system established under section 68-1403, R.C.M. 1947, the highway patrolmen's retirement system established under section 31-202, R.C.M. 1947, a sheriffs' retirement program, and the various public employees in the hazardous employment of the areas of fire protection and law enforcement.

Section 2. As part of the valuation of these various retirement programs the legislative council in cooperation with the department of administration, public employees' retirement division, will prepare suggested legislation for the 44th legislative session to implement a consolidated retirement system.

Section 3. If any of the municipal retirement systems do not choose to participate in the consolidated retirement program within three (3) months of the consolidated system's inception upon participating in the consolidation at a later date the municipal system will reimburse the general fund the amount of the prorata cost of the actuarial valuation for the members of the municipal system.

Section 4. Any monies herein provided that are not expended for the purposes herein detailed will revert to the fund from which they were appropriated provided that these monies are available through the fiscal year ending June 30, 1975, and any excess will not revert until after that date.

Section 5. This act is effective upon passage and approval.

Approved March 14, 1974

### **SENATE BILL NO. 511**

AN ACT APPROPRIATING MONEY FOR THE OPERATION OF THE FORTY-THIRD LEGISLATURE; AND SPECIFYING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. One million two hundred thousand dollars (\$1,200,000) is appropriated from the general fund for the operation of the forty-third legislature.

Section 2. This act is effective on its passage and approval.

Approved January 12, 1974

### **SENATE BILL NO. 531**

AN ACT TO APPROPRIATE MONEY FOR CAPITAL PROJECTS FOR THE BIENNIUM ENDING JUNE 30, 1975; AND PROVIDING FOR OTHER MATTERS RELATING TO THE APPROPRIATIONS.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. For the purposes of this act, unless otherwise stated:

(1) "Agency" includes all state offices, departments, divisions, boards, commissions, councils, committees, university system, board of institutions and other entities or instrumentalities of state government.

(2) "Capital project" means acquisition of land or improvements, planning, capital construction, renovation, furnishing and major repair projects authorized in this act.

(3) "Approved budget amendment" means approval by the director, department of administration, of a request submitted through the construction and maintenance division to:

(a) obtain financing for a new or expanded project from funds which were not available for consideration by the legislature, but which have become available; or

(b) transfer excess funds appropriated to a capital project within an agency to increase the appropriations of another capital project within that agency.

Section 2. No new capital project may be established and no existing capital project may be expanded beyond the scope of the project as approved by the legislature in the 1975 biennial budget unless the new capital project or the capital project expansion is authorized by an approved budget amendment.

Section 3. If a capital project is jointly financed by an appropriation or appropriations from state sources as well as by appropriations from other sources, the funds provided by appropriation from state sources shall be decreased by the amount that the funds received from other sources exceeds the amount from other sources appropriated by the legislature in the 1975 biennial budget; provided that:

(1) the decrease does not jeopardize the receipt of the funds to be received from other sources; and

(2) this section shall not apply to any excess funds if they are to be expended for a new or expanded project approved by the director, department of administration, upon request submitted to him through the construction and maintenance division.

Section 4. When an agency received federal funds as a reimbursement for the cost of administering a federal program and this cost was financed by an appropriation from state funds, the federal funds shall be deposited into the state fund from which the disbursements were originally made, unless usage of the federal funds is restricted by federal provisions.

Section 5. The following money is appropriated from indicated accounts and funds to the director, department of administration, for the biennium ending June 30, 1975, for the indicated capital projects:

|                                                                                          |                                                                              |
|------------------------------------------------------------------------------------------|------------------------------------------------------------------------------|
| Long Range Building<br>Program Account<br>Bond Proceeds &<br>Insurance Clearance<br>Fund | Federal Revenue<br>Sharing Account<br>Federal and Private<br>Revenue<br>Fund |
|------------------------------------------------------------------------------------------|------------------------------------------------------------------------------|

#### CENTER FOR THE AGED

|                              |         |         |
|------------------------------|---------|---------|
| Construct Dormitory Addition | 634,000 | 193,400 |
|------------------------------|---------|---------|

#### WARM SPRINGS STATE HOSPITAL

|                                                                 |         |
|-----------------------------------------------------------------|---------|
| Update Facilities for Medicare<br>Medicaid Compliance, Phase II | 156,600 |
|-----------------------------------------------------------------|---------|

Section 6. If any section, subsection, sentence, clause, or phrase of this act is for any reason held unconstitutional or void, such decision shall not affect the validity of the remaining portions of this act.

Section 7. The authorization to renovate the Mussinbrod Building, Warm Springs State Hospital, is repealed with the monies to revert to the Federal Revenue Sharing Account, Federal and Private Revenue Fund.

Approved March 26, 1974

**SENATE BILL NO. 532**

AN ACT TO APPROPRIATE MONEYS TO VARIOUS STATE AGENCIES FOR THE BIENNIUM ENDING JUNE 30, 1975; AND PROVIDING FOR OTHER MATTERS RELATING TO THE APPROPRIATIONS; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. For the purposes of this act, unless otherwise stated:

(1) "Agency" includes all state offices, departments, divisions, boards, commissions, councils, committees, institutions, university units, and other entities or instrumentalities of state government.

(2) "Program" means a segment that includes a combination of planned efforts to provide a service.

(3) "Approved budget amendment" means approval by the governor, or his designated representative, of a request submitted through the budget bureau to:

(a) obtain financing for a new or expanded program from funds which were not available for consideration by the legislative assembly but which have become available from a source other than state's general fund; or

(b) transfer appropriations, including general fund appropriations, between programs within a state agency; or

(c) expend remaining balances of the first fiscal year appropriations, including general fund appropriations, during the second fiscal year of the biennium.

Section 2. The appropriations contained in this act are intended to provide only necessary and ordinary expenditures for the year for which the appropriations are made. Except for amounts subject to accrual at the end of each fiscal year, the unexpended balance of any appropriation shall revert to the fund from which it was appropriated. In case of necessity, an appropriation not expended during the first fiscal year of the biennium may be expended during the second fiscal year by approved budget amendment.

Section 3. The appropriations in this act are intended to provide for all expenditures for:

(1) personal services;

(2) all other ordinary and necessary expenditures for the operation of the agency and the program to which the appropriation applies;

(3) repairs and maintenance, other than major alterations of existing buildings; and

(4) the purchase or replacement of capital items other than expendi-



tures for the construction, improvement, or furnishing of buildings or purchase of buildings or land unless specifically authorized.

Section 4. Financing for new or expanded programs from sources other than general fund may be made available by approved budget amendment.

Section 5. Each agency shall submit to the budget bureau, on or before July 1 of each fiscal year, an operational plan within the limits of appropriations which includes the position and salary of all officers and employees. The salary of the chief administrator of each agency shall be determined by the appointing authority. Informational copies of operational plan changes shall be submitted to the budget bureau for review.

Section 6. No new program may be established and no existing program may be expanded beyond the scope of the programs approved by the legislative assembly in the 1975 biennial budget, unless the new program or the program expansion and its method of financing is approved by the governor, or his designated representative after presentation through the budget bureau.

Section 7. Transfers of appropriated funds between programs of an agency may be made only by an approved budget amendment.

Section 8. If the operation of a state agency is financed by an appropriation or appropriations from the general fund as well as by appropriation from other sources, the funds provided by appropriation from the general fund shall be decreased by the amount that the funds received from other sources exceeds the amount from other sources appropriated by the legislature in the 1975 biennial budget, provided that:

(1) the decrease does not jeopardize the receipt of the funds to be received from other sources; and

(2) this section shall not apply to any excess funds if they are to be expended for a new or expanded program approved by the governor, or his designated representative upon a request submitted to him through the budget bureau.

Section 9. When an agency receives federal funds as a reimbursement for the cost of administering a federal program and this cost was financed by a general fund appropriation, the federal funds shall be deposited into the general fund unless usage of the federal funds is restricted by federal provisions.

Section 10. The governor may reduce any appropriation by not more than fifteen percent (15%) except appropriations for:

- (1) payment of interest and retirement of the state debt;
- (2) operation of the legislature;
- (3) public schools;
- (4) the judiciary; or
- (5) salaries of public officers, during their term of office.

Section 11. If any section, subsection, sentence, clause, or phrase of this act is for any reason held unconstitutional, such decision shall not affect the validity of the remaining portions of this act.

Section 12. The following moneys are appropriated for the biennium ending June 30, 1975:

|                                                | Fiscal<br>Year<br>Ending<br>6/30/74 | Fiscal<br>Year<br>Ending<br>6/30/75 |
|------------------------------------------------|-------------------------------------|-------------------------------------|
| <b>DEPARTMENT OF INSTITUTIONS</b>              |                                     |                                     |
| Department Operations Program                  |                                     |                                     |
| From General Fund                              | 123                                 | 129                                 |
| Reimbursement Program                          |                                     |                                     |
| From General Fund                              | 148                                 | 155                                 |
| Community Based Services Program               |                                     |                                     |
| From General Fund                              | 28,679                              | 1,062                               |
| <b>BOULDER RIVER SCHOOL &amp; HOSPITAL</b>     |                                     |                                     |
| General Services and Physical<br>Plant Program |                                     |                                     |
| From General Fund                              | 90,460                              | 281,840                             |
| Clinical Services Program                      |                                     |                                     |
| From General Fund                              | 17,664                              | 70,658                              |
| <b>CENTER FOR THE AGED</b>                     |                                     |                                     |
| Administration Program                         |                                     |                                     |
| From General Fund                              | 1,035                               | 1,087                               |
| Care and Treatment Program                     |                                     |                                     |
| From General Fund                              | 2,554                               | 2,682                               |
| General Services and Physical<br>Plant Program |                                     |                                     |
| From General Fund                              | 6,415                               | 9,986                               |
| <b>CHILDREN'S CENTER</b>                       |                                     |                                     |
| Administration Program                         |                                     |                                     |
| From General Fund                              | 730                                 | 766                                 |
| Counseling and Guidance Program                |                                     |                                     |
| From General Fund                              | 6,074                               | 6,378                               |
| General Services and Physical<br>Plant Program |                                     |                                     |
| From General Fund                              | 2,887                               | 3,031                               |
| Education Program                              |                                     |                                     |
| From General Fund                              | 1,598                               | 1,678                               |
| <b>EASTMONT TRAINING CENTER</b>                |                                     |                                     |
| Administration Program                         |                                     |                                     |
| From General Fund                              | 483                                 | 507                                 |
| Care and Custody Program                       |                                     |                                     |
| From General Fund                              | 1,506                               | 1,581                               |
| General Services and Physical<br>Plant Program |                                     |                                     |
| From General Fund                              | 307                                 | 322                                 |
| Education and Rehabilitation Program           |                                     |                                     |
| From General Fund                              | 1,372                               | 1,441                               |

## GALEN STATE HOSPITAL

|                                             |        |         |
|---------------------------------------------|--------|---------|
| Administration Program                      |        |         |
| From General Fund                           | 2,206  | 2,316   |
| Care and Treatment Program                  |        |         |
| From General Fund                           | 23,117 | 29,023  |
| Alcoholic Treatment Program                 |        |         |
| From General Fund                           | -0-    | 200,000 |
| General Services and Physical Plant Program |        |         |
| From General Fund                           | 14,733 | 21,470  |

## MOUNTAIN VIEW SCHOOL

|                                             |       |       |
|---------------------------------------------|-------|-------|
| Administration Program                      |       |       |
| From General Fund                           | 409   | 429   |
| Care and Custody Program                    |       |       |
| From General Fund                           | 1,734 | 1,821 |
| Education and Training Program              |       |       |
| From General Fund                           | 678   | 712   |
| General Services and Physical Plant Program |       |       |
| From General Fund                           | 718   | 754   |

## PINE HILLS SCHOOL

|                                             |       |       |
|---------------------------------------------|-------|-------|
| Administration Program                      |       |       |
| From General Fund                           | 492   | 517   |
| Care and Custody Program                    |       |       |
| From General Fund                           | 1,826 | 1,917 |
| General Services and Physical Plant Program |       |       |
| From General Fund                           | 1,040 | 1,092 |
| Education and Training Program              |       |       |
| From General Fund                           | 1,383 | 1,452 |
| Farm Program                                |       |       |
| From General Fund                           | 193   | 203   |
| Clinical Services Program                   |       |       |
| From General Fund                           | 838   | 880   |

## MONTANA STATE PRISON

|                                             |         |       |
|---------------------------------------------|---------|-------|
| Administration Program                      |         |       |
| From General Fund                           | 867     | 910   |
| Care and Custody Program                    |         |       |
| From General Fund                           | 7,614   | 7,995 |
| General Services and Physical Plant Program |         |       |
| From General Fund                           | 77,169  | 8,777 |
| Education Program                           |         |       |
| From General Fund                           | 316     | 332   |
| Ranch and Dairy Program                     |         |       |
| From General Fund                           | 374,213 | 860   |
| Bureau of Identification Program            |         |       |
| From General Fund                           | 158     | 166   |
| Inmate Training Program                     |         |       |
| From General Fund                           | 480     | 504   |

**SWAN RIVER YOUTH FOREST CAMP**

|                                             |       |       |
|---------------------------------------------|-------|-------|
| Administration Program                      |       |       |
| From General Fund                           | 388   | 407   |
| Counseling and Supervision Program          |       |       |
| From General Fund                           | 1,497 | 1,542 |
| Education and Training Program              |       |       |
| From General Fund                           | 2,078 | 2,082 |
| General Services and Physical Plant Program |       |       |
| From General Fund                           | 2,936 | 6,001 |

**VETERANS' HOME**

|                           |       |       |
|---------------------------|-------|-------|
| Administration Program    |       |       |
| From General Fund         | 560   | 588   |
| Care and Services Program |       |       |
| From General Fund         | 2,686 | 3,720 |
| Nursing Care Program      |       |       |
| From General Fund         | 1,577 | 1,656 |

**WARM SPRINGS STATE HOSPITAL**

|                                             |         |         |
|---------------------------------------------|---------|---------|
| Administration Program                      |         |         |
| From General Fund                           | 4,183   | 4,392   |
| Care and Treatment Program                  |         |         |
| From General Fund                           | 317,969 | 876,747 |
| General Services and Physical Plant Program |         |         |
| From General Fund                           | 113,100 | 117,001 |
| Alcoholic Treatment Program                 |         |         |
| From General Fund                           | 1,909   | 2,004   |
| Drug Treatment Program                      |         |         |
| From General Fund                           | 1,868   | 1,961   |
| Commissary Program                          |         |         |
| From General Fund                           | 128     | 134     |

Section 13. This act is effective upon passage and approval.

Approved March 26, 1974

**SENATE BILL NO. 533**

AN ACT TO APPROPRIATE MONEYS TO VARIOUS STATE AGENCIES FOR THE BIENNIUM ENDING JUNE 30, 1975; AND PROVIDING FOR OTHER MATTERS RELATING TO THE APPROPRIATIONS; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. For the purposes of this act, unless otherwise stated:

(1) "Agency" includes all state offices, departments, divisions, boards, commissions, councils, committees, institutions, university units, and other entities or instrumentalities of state government.

(2) "Program" means a segment that includes a combination of planned efforts to provide a service.

(3) "Approved budget amendment" means approval by the governor, or his designated representative, of a request submitted through the budget bureau for executive branch agencies; approval by the chief justice of the supreme court for judicial branch agencies; and approval by the respective legislative committees for legislative branch agencies, to:

(a) obtain financing for a new or expanded program from funds which were not available for consideration by the legislative assembly but which have become available from a source other than state's general fund; or

(b) transfer appropriations, including general fund appropriations, between programs within a state agency; or

(c) expend remaining balances of the first fiscal year appropriations, including general fund appropriations, during the second fiscal year of the biennium.

Section 2. The appropriations contained in this act are intended to provide only necessary and ordinary expenditures for the year for which the appropriations are made. Except for amounts subject to accrual at the end of each fiscal year, the unexpended balance of any appropriation shall revert to the fund from which it was appropriated. In case of necessity, an appropriation not expended during the first fiscal year of the biennium may be expended during the second fiscal year by approved budget amendment.

Section 3. The appropriations in this act are intended to provide for all expenditures for:

(1) personal services;

(2) all other ordinary and necessary expenditures for the operation of the agency and the program to which the appropriation applies;

(3) repairs and maintenance, other than major alterations of existing buildings; and

(4) the purchase or replacement of capital items other than expenditures for the construction, improvement, or furnishing of buildings or purchase of buildings or land unless specifically authorized.

Section 4. Financing for new or expanded programs from sources other than general fund may be made available by approved budget amendment.

Section 5. Each executive branch agency shall submit to the budget bureau, on or before July 1 of each fiscal year, an operational plan within the limits of appropriations which includes the position and salary of all officers and employees. The salary of the chief administrator of each agency shall be determined by the appointing authority. Informational copies of operational plan changes shall be submitted to the budget bureau for review.

Section 6. No new program may be established and no existing program may be expanded beyond the scope of the programs approved by the legislative assembly in the 1975 biennial budget, unless the new pro-

gram or the program expansion and its method of financing is approved by means of an approved budget amendment.

Section 7. Transfers of appropriated funds between programs of an agency may be made only by an approved budget amendment.

Section 8. If the operation of a state agency is financed by an appropriation or appropriations from the general fund as well as by appropriation from other sources, the funds provided by appropriation from the general fund shall be decreased by the amount that the funds received from other sources exceeds the amount from other sources appropriated by the legislature in the 1975 biennial budget, provided that:

(1) the decrease does not jeopardize the receipt of the funds to be received from other sources; and

(2) this section shall not apply to any excess funds if they are to be expended for a new or expanded program approved by means of an approved budget amendment.

Section 9. When an agency receives federal funds as a reimbursement for the cost of administering a federal program and this cost was financed by a general fund appropriation, the federal funds shall be deposited into the general fund unless usage of the federal funds is restricted by federal provisions.

Section 10. The governor may reduce any appropriation by not more than fifteen percent (15%) except appropriations for:

- (1) payment of interest and retirement of the state debt;
- (2) operation of the legislature;
- (3) public schools;
- (4) the judiciary; or
- (5) salaries of public officers, during their term of office.

Section 11. In addition to the amounts specifically appropriated by this act, there is hereby appropriated to the legislative auditor for the legislative audit program that amount that state agency heads agree to provide for audits from their available non-general fund resources.

Section 12. If any section, subsection, sentence, clause, or phrase of this act is for any reason held unconstitutional, such decision shall not affect the validity of the remaining portions of this act.

Section 13. The following moneys are appropriated for the biennium ending June 30, 1975:

|                        | Fiscal Year<br>Ending<br><u>6/30/74</u> | Fiscal Year<br>Ending<br><u>6/30/75</u> |
|------------------------|-----------------------------------------|-----------------------------------------|
| JUDICIAL BRANCH        |                                         |                                         |
| County Attorneys       |                                         |                                         |
| Legal Services Program |                                         |                                         |
| From General Fund      | 1,734                                   | 0                                       |

|                   |       |   |
|-------------------|-------|---|
| District Judges   |       |   |
| From General Fund | 2,112 | 0 |

## ELECTED OFFICIALS

|                                       |        |         |
|---------------------------------------|--------|---------|
| Governor                              |        |         |
| Citizen's Advocate Program            |        |         |
| From General Fund                     | 16,348 | 34,292  |
| Local Government Study Program        |        |         |
| From General Fund                     | 51,317 | 149,064 |
| Office of Budget and Program Planning |        |         |
| From General Fund                     | 24,130 | 96,361  |
| Educational Broadcasting Commission   |        |         |
| Educational Television Program        |        |         |
| From General Fund                     | 0      | 300,000 |
| Superintendent of Public Instruction  |        |         |
| Development of Basic Skills           |        |         |
| From General Fund                     | 10,000 | 50,000  |
| Department of Justice                 |        |         |
| Legal Services Program                |        |         |
| From General Fund                     | 0      | 5,000   |
| Secretary of State                    |        |         |
| Records Management Program            |        |         |
| From General Fund                     | 20,036 | 14,996  |
| Lieutenant Governor                   |        |         |
| Research Program                      |        |         |
| From General Fund                     | 0      | 51,210  |

## DEPARTMENT OF STATE LANDS

|                                      |        |   |
|--------------------------------------|--------|---|
| For Implementation of House Bill 628 |        |   |
| Providing for Designation of         |        |   |
| Natural Areas                        |        |   |
| From General Fund                    | 20,000 | 0 |

## BLUE RIBBON COMMITTEE

|                              |       |       |
|------------------------------|-------|-------|
| Study Mental Health Services |       |       |
| From General Fund            | 5,000 | 5,000 |

## DEPARTMENT OF LABOR AND INDUSTRY

|                                    |   |        |
|------------------------------------|---|--------|
| For Implementation of Civil Rights |   |        |
| Commission                         |   |        |
| From General Fund                  | 0 | 61,000 |

## DEPARTMENT OF JUSTICE

|                                    |   |         |
|------------------------------------|---|---------|
| Patrol Operations Program          |   |         |
| For purposes of payment of Highway |   |         |
| Patrol Retirement Contributions    |   |         |
| From General Fund                  | 0 | 302,000 |
| From Earmarked Revenue Fund        |   |         |
| Highway Account                    | 0 | 50,000  |

## LEGISLATIVE COUNCIL

|                            |   |        |
|----------------------------|---|--------|
| For Roll Call Machines     |   |        |
| From General Fund          | 0 | 12,500 |
| For Improving Sound System |   |        |
| From General Fund          | 0 | 7,500  |

Section 14. This act is effective on passage and approval.

Approved March 26, 1974

**SENATE BILL NO. 594**

AN ACT APPROPRIATING ONE HUNDRED TEN THOUSAND DOLLARS (\$110,000) TO THE LEGISLATIVE COUNCIL FOR THE PUBLICATION OF THE JOURNALS, SESSION LAWS, AND STATUTE NUMBER COMPILATIONS OF THE 1974 LEGISLATURE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is appropriated from the general fund the sum of one hundred ten thousand dollars (\$110,000) to the legislative council, for the publication of the journals, session laws, and statute number compilations of the legislature in the calendar year 1974.

Approved March 28, 1974

**SENATE BILL NO. 622**

AN ACT APPROPRIATING FIFTEEN THOUSAND SIX HUNDRED DOLLARS (\$15,600) TO THE UNIVERSITY OF MONTANA LAW SCHOOL FOR THE JUSTICE OF THE PEACE ORIENTATION COURSE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is appropriated from the general fund fifteen thousand six hundred dollars (\$15,600) to the university of Montana law school for conducting the justice of the peace orientation course.

Section 2. Money received from federal or private sources to support the orientation school shall be deposited in the general fund unless restricted by the terms of the grant.

Approved March 28, 1974

**SENATE BILL NO. 629**

AN ACT APPROPRIATING MONEY TO WIBAUX COUNTY, A POLIT-



ICAL SUBDIVISION OF THE STATE OF MONTANA, AND CONTRIBUTION TO THE WIBAUX COUNTY FISH POND AND RECREATION PROJECT IN WIBAUX COUNTY, MONTANA; AND PROHIBITING EXPENDITURE OF SUCH MONEY UNTIL ALL FUNDS NECESSARY FOR COMPLETION OF PROJECT ARE AVAILABLE AND COMMITTED.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. (1) The amounts of money hereinafter stated are appropriated from the indicated accounts and funds to Wibaux County, a political subdivision of the state of Montana, for the fiscal year ending June 30, 1975, for participation in, and contribution to, the Wibaux County Fish Pond and recreation project in Wibaux County, Montana, as follows:

(a) for the excavation of a fish pond, construction of access road and protective dikes, and related recreation facilities the amount of eight thousand dollars (\$8,000) from the earmarked revenue fund, Fish and Game Account fund.

Section 2. Moneys appropriated in section 1 of this act may not be spent until all funds necessary for completion of the project are available and committed.

Approved March 28, 1974

## SENATE BILL NO. 726

AN ACT TO APPROPRIATE ONE HUNDRED SEVENTY-FIVE THOUSAND TWO HUNDRED DOLLARS (\$175,200) TO THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES FROM THE GENERAL FUND FOR THE PROVISION OF SUPPLEMENTARY PAYMENTS TO RECIPIENTS OF SUPPLEMENTAL SECURITY INCOME, TITLE XVI OF THE SOCIAL SECURITY ACT, FOR THE BIENNIUM ENDING JUNE 30, 1975.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. The following moneys are appropriated for the biennium ending June 30, 1975:

### DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

Economic Assistance Program  
From General Fund

\$175,200

Approved March 26, 1974

**SENATE BILL NO. 727**

AN ACT APPROPRIATING TWENTY THOUSAND DOLLARS (\$20,000) FROM THE GENERAL FUND TO THE OFFICE OF THE GOVERNOR FOR THE PURPOSE OF FUNDING A PROGRAM FOR RECREATION, PHYSICAL FITNESS AND LIFETIME SPORTS FOR THE BIENNIUM ENDING JUNE 30, 1975.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is appropriated to the office of the governor from the general fund for the funding of a program for recreation, physical fitness and lifetime sports for the biennium ending June 30, 1975, the sum of twenty thousand dollars (\$20,000).

Approved March 28, 1974

**SENATE BILL NO. 729**

AN ACT APPROPRIATING TWO HUNDRED TWENTY-SEVEN THOUSAND DOLLARS (\$227,000) TO THE ARCHITECTURE AND ENGINEERING CONSTRUCTION ADVANCE ACCOUNT, REVOLVING FUND FROM THE DEPARTMENT OF HIGHWAYS EARMARKED REVENUE FUND FOR THE CONSTRUCTION OF A CAPITOL COMPLEX MOTOR POOL FACILITY.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is appropriated to the architecture and engineering construction advance account, revolving fund from the department of highways earmarked revenue fund for the biennium ending June 30, 1975, the sum of two hundred twenty-seven thousand dollars (\$227,000) for construction of a capitol complex motor pool facility at Helena, Montana, the building shall be fabricated steel construction and the cost shall include the architect's fee.

Section 2. For the purposes of this act, unless otherwise stated:

(1) "Agency" includes all state offices, departments, divisions, boards, commissions, councils, committees, university system, board of institutions and other entities or instrumentalities of state government.

(2) "Capitol project" means the construction of a capitol complex motor pool facility including acquisition of land or improvements, planning, capitol construction, and furnishing authorized in this act.

(3) "Approved budget amendment" means approval by the director, department of administration, of a request submitted through the construction and maintenance division to:

(a) obtain financing for an expanded project from funds which were

not available for consideration by the legislature, but which have become available; or

(b) transfer excess funds appropriated to a capitol project within an agency to increase the appropriations of another capitol project within that agency.

Section 3. No existing capitol project may be expanded beyond the scope of the project as approved by the legislature in the 1975 biennial budget unless the capitol project expansion is authorized by an approved budget amendment.

Section 4. The department of highways shall reimburse the earmarked revenue fund all sums transferred under this act by including in its charges to the individual state agencies using motor pool vehicles a sum not to exceed one-half ( $\frac{1}{2}$ ) cent per mile.

Approved March 28, 1974

### SENATE BILL NO. 733

AN ACT TO RE-APPROPRIATE MONEY FROM THE LONG-RANGE BUILDING PROGRAM ACCOUNT, TO THE DEPARTMENT OF ADMINISTRATION FOR THE PURPOSE OF CONSTRUCTING A BUILDING ON STATE-OWNED LAND TO BE USED BY THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. The unexpended balance of appropriation No. 62002 from the long-range building program account, bond proceeds and insurance clearance fund, is re-appropriated to the department of administration for the purpose of appointing an architect to draw plans and specifications for the construction of the building provided for in section 2. All federal funds that may become available for this purpose are appropriated to the department of administration.

Section 2. In accordance with the provisions of the laws of the state of Montana, the department of administration is authorized, as part of the long-range building program, to enter into a rental contract which provides an option to purchase a new office building to be used by the department of social and rehabilitation services and to be built on state-owned lands. The department of administration shall have the authority to apply all pledges and appropriations to the contract as authorized by law.

Section 3. This act is effective upon passage and approval.

Approved March 26, 1974

**SENATE BILL NO. 734**

**AN ACT TO APPROPRIATE MONEY FOR CAPITAL PROJECTS FOR THE BIENNIUM ENDING JUNE 30, 1975; PROVIDING FOR OTHER MATTERS RELATING TO THE APPROPRIATIONS; AND PROVIDING AN EFFECTIVE DATE.**

*Be it enacted by the Legislature of the State of Montana:*

Section 1. For the purposes of this act, unless otherwise stated:

(1) "Agency" includes all state offices, departments, divisions, boards, commissions, councils, committees, university system, board of institutions and other entities or instrumentalities of state government.

(2) "Capital project" means acquisition of land or improvements, planning, capital construction, renovation, furnishing and major repair projects authorized in this act.

(3) "Approved budget amendment" means approval by the director, department of administration, of a request submitted through the construction and maintenance division to:

(a) obtain financing for a new or expanded project from funds which were not available for consideration by the legislature, but which have become available; or

(b) transfer excess funds appropriated to a capital project within an agency to increase the appropriations of another capital project within that agency.

Section 2. No new capital project may be established and no existing capital project may be expanded beyond the scope of the project as approved by the legislature in the 1975 biennial budget unless the new capital project or the capital project expansion is authorized by an approved budget amendment.

Section 3. The following money is appropriated from indicated accounts and funds to the director, department of administration, for the biennium ending June 30, 1975, for the indicated capital project:

**DEPARTMENT OF INSTITUTIONS**

Construction of new prison

From the federal revenue sharing

capital construction account,

federal and private revenue fund

**\$600,000**

All federal funds that may

become available for this purpose.

Section 4. If any section, subsection, sentence, clause, or phrase of this act is for any reason held unconstitutional or void, such decision shall not affect the validity of the remaining portions of this act.

Section 5. This act shall be effective on its passage and approval.

Approved March 26, 1974

**SENATE BILL NO. 737**

AN ACT APPROPRIATING MONEY TO THE DEPARTMENT OF STATE LANDS TO FUND THE SALINE-ALKALI STUDY AND FOLLOW UP; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Ten thousand dollars (\$10,000) the first year and two hundred fifty-five thousand six hundred eighty-five dollars (\$255,685) the second year are appropriated from the general fund to the department of state lands to be used in funding the saline-alkali study and its related duties. There is hereby appropriated all available federal moneys to carry out the intent of this act.

Section 2. This act is effective on its passage and approval.

Approved March 26, 1974

**SENATE BILL NO. 739**

AN ACT APPROPRIATING MONEY FROM THE GENERAL FUND TO THE OFFICE OF ATTORNEY GENERAL OF THE DEPARTMENT OF JUSTICE FOR PROSECUTORIAL FUNCTIONS DIRECTLY RELATED TO THE LEGISLATIVE AUDIT OF THE WORKMEN'S COMPENSATION DIVISION FOR THE FISCAL YEARS 1974 AND 1975.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is appropriated from the general fund to the office of attorney general, for prosecutorial functions directly related to the legislative audit of the workmen's compensation division, the following monies:

|                  |           |
|------------------|-----------|
| Fiscal year 1974 | \$ 78,268 |
| Fiscal year 1975 | 104,923   |

Approved March 28, 1974

**SENATE BILL NO. 740**

AN ACT TO APPROPRIATE MONEYS TO THE DEPARTMENT OF HIGHWAYS, MOTOR POOL DIVISION, TO PAY FOR DELINQUENCIES OWED IT BY VARIOUS AGENCIES.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. It is the purpose of this act to provide funds to the department of highways, motor pool division, to pay for delinquencies owed it by various agencies.

Section 2. There is hereby appropriated from the general fund to the department of highways, motor pool division, seventy-five thousand dollars (\$75,000) for the purpose described in section 1 of this act.

Section 3. This act is effective on its passage and approval.

Approved March 28, 1974.

### **SENATE BILL NO. 742**

AN ACT APPROPRIATING FIFTEEN THOUSAND DOLLARS (\$15,000) FROM THE GENERAL FUND TO THE LEGISLATIVE COUNCIL FOR THE PURPOSE OF UPDATING THE STATUTORY INFORMATION RETRIEVAL SYSTEM DATA BASE FOLLOWING THE CLOSE OF THE 1974 SESSION OF THE MONTANA LEGISLATURE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. There is appropriated from the general fund the sum of fifteen thousand dollars (\$15,000) to the legislative council for the purpose of updating the statutory information retrieval system data base following the close of the 1974 session of the Montana legislature.

Approved March 26, 1974

### **SENATE BILL NO. 744**

AN ACT APPROPRIATING MONEY TO THE DEPARTMENT OF ADMINISTRATION FOR THE GENERAL SERVICES DIVISION TO PURCHASE A MULTILITH DUPLICATOR AND OTHER EQUIPMENT FOR THE DUPLICATING CENTER.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Twenty thousand dollars (\$20,000) is appropriated from the general fund to the department of administration for the general services division for the purchase of a model 2675 multilith offset duplicator and related equipment for the duplicating center.

Approved March 28, 1974

**SENATE BILL NO. 745**

**AN ACT TO APPROPRIATE MONEYS TO THE STATE AUDITOR FOR THE BIENNIUM ENDING JUNE 30, 1975; AND PROVIDING FOR OTHER MATTERS RELATING TO THE APPROPRIATIONS; AND PROVIDING AN EFFECTIVE DATE.**

*Be it enacted by the Legislature of the State of Montana:*

Section 1. For the purposes of this act, unless otherwise stated:

(1) "Agency" includes all state offices, departments, divisions, boards, commissions, councils, committees, institutions, university units, and other entities or instrumentalities of state government.

(2) "Program" means a segment that includes a combination of planned efforts to provide a service.

(3) "Approved budget amendment" means approval by the governor, or his designated representative, of a request submitted through the budget bureau for executive branch agencies; approval by the chief justice of the supreme court for judicial branch agencies; and approval by the respective legislative committees for legislative branch agencies, to:

(a) obtain financing for a new or expanded program from funds which were not available for consideration by the legislative assembly but which have become available from a source other than state's general fund; or

(b) transfer appropriations, including general fund appropriations, between programs within a state agency; or

(c) Expend remaining balances of the first fiscal year appropriations, including general fund appropriations, during the second fiscal year of the biennium.

Section 2. The appropriations contained in this act are intended to provide only necessary and ordinary expenditures for the year for which the appropriations are made. Except for amounts subject to accrual at the end of each fiscal year, the unexpended balance of any appropriation shall revert to the fund from which it was appropriated. In case of necessity, an appropriation not expended during the first fiscal year of the biennium may be expended during the second fiscal year by approved budget amendment.

Section 3. The appropriations in this act are intended to provide for all expenditures for:

(1) personal services;

(2) all other ordinary and necessary expenditures for the operation of the agency and the program to which the appropriation applies;

(3) repairs and maintenance, other than major alterations of existing buildings; and

(4) the purchase or replacement of capital items other than expenditures for the construction, improvement, or furnishing of buildings or purchase of buildings or land unless specifically authorized.

Section 4. Financing for new or expanded programs from sources other than general fund may be made available by approved budget amendment.

Section 5. Each executive branch agency shall submit to the budget bureau, on or before July 1 of each fiscal year, an operational plan within the limits of appropriations which includes the position and salary of all officers and employees. The salary of the chief administrator of each agency shall be determined by the appointing authority. Informational copies of operational plan changes shall be submitted to the budget bureau for review.

Section 6. No new program may be established and no existing program may be expended beyond the scope of the programs approved by the legislative assembly in the 1975 biennial budget, unless the new program or the program expansion and its method of financing is approved by means of an approved budget amendment.

Section 7. Transfers of appropriated funds between programs of an agency may be made only by an approved budget amendment.

Section 8. If the operation of a state agency is financed by an appropriation or appropriations from the general fund as well as by appropriation from other sources, the funds provided by appropriation from the general fund shall be decreased by the amount that the funds received from other sources exceeds the amount from other sources appropriated by the legislature in the 1975 biennial budget, provided that:

(1) the decrease does not jeopardize the receipt of the funds to be received from other sources; and

(2) this section shall not apply to any excess funds if they are to be expended for a new or expanded program approved by means of an approved budget amendment.

Section 9. When an agency receives federal funds as a reimbursement for the cost of administering a federal program and this cost was financed by a general fund appropriation, the federal funds shall be deposited into the general fund unless usage of the federal funds is restricted by federal provisions.

Section 10. The governor may reduce any appropriation by not more than fifteen percent (15%) except appropriations for:

- (1) payment of interest and retirement of the state debt;
- (2) operation of the legislature;
- (3) public schools;
- (4) the judiciary; or
- (5) salaries of public officers, during their term of office.



Section 11. If any section, subsection, sentence, clause, or phrase of this act is for any reason held unconstitutional, such decision shall not affect the validity of the remaining portions of this act.

Section 12. The following moneys are appropriated for the biennium ending June 30, 1975:

|  | Fiscal Year    | Fiscal Year    |
|--|----------------|----------------|
|  | Ending         | Ending         |
|  | <u>6/30/74</u> | <u>6/30/75</u> |

#### AUDITOR

|                            |          |           |
|----------------------------|----------|-----------|
| Ins. Reg. and Lic. Program |          |           |
| From General Fund          | \$76,500 | \$229,200 |

The committee intends the \$75,000 requested for actuarial services and data processing of actuarial computations may not be transferred or expended for other programs or purchases. Furthermore, the committee disallows the \$10,000 and \$5,500 requested for new mechanical posting/accounting machinery, but encourages a thorough study of the division's record keeping needs in cooperation with the Department of Administration, which can provide apt professional assistance.

Section 13. This act is effective on passage and approval.

Approved March 28, 1974

### SENATE BILL NO. 746

AN ACT APPROPRIATING MONEY TO PAY THE EMPLOYER'S CONTRIBUTION TO THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM ON BEHALF OF THE MEMBERS OF THE LEGISLATURE AND LEGISLATIVE ATTACHES.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Twelve thousand four hundred fifty-eight dollars (\$12,458) is appropriated from the general fund to the legislative business manager for the purpose of paying the employer's contribution to the public employees' retirement system for the members of the legislature and legislative attaches.

Approved March 28, 1974



# **RESOLUTIONS**

**ADOPTED BY THE**

**Forty-Third Legislature**

In Second Regular Session

**STATE OF MONTANA**

**1974**

**1553**



## RESOLUTIONS

### HOUSE JOINT RESOLUTION NO. 004

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA RATIFYING THE PROPOSED AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES RELATING TO EQUAL RIGHTS ON ACCOUNT OF SEX.

WHEREAS, the ninety-second congress of the United States of America at its second session, in both houses, by a constitutional majority of two-thirds (⅔) thereof, adopted the following proposition to amend the constitution of the United States of America in the following words:

#### "JOINT RESOLUTION

Proposing an amendment to the Constitution of the United States relative to equal rights for men and women.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress:

#### Article\_\_\_\_

Section 1. Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex.

Sec. 2. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

Sec. 3. This amendment shall take effect two years after the date of ratification."

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the proposed amendment to the constitution of the United States of America be and the same is hereby ratified, and

BE IT FURTHER RESOLVED, that certified copies of this resolution be forwarded by the secretary of state to the administrator of the general services administration, Washington, D.C., and the president of the senate and the speaker of the house of representatives of the congress of the United States.

Approved January 25, 1974

**HOUSE JOINT RESOLUTION NO. 38**

**A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING MONTANA'S CONGRESSIONAL DELEGATION TO SPONSOR AN AMENDMENT TO THE U.S. CONSTITUTION GUARANTEEING THE RIGHT TO LIFE.**

WHEREAS, the recent decision of the U.S. supreme court concerning the several states' statutes concerning abortions has stirred considerable controversy, and

WHEREAS, not all Montanans are necessarily in agreement with that decision, it would appear appropriate that Montana's congressional delegation sponsor the following resolution proposing an amendment to the U.S. constitution:

**"RESOLUTION**

Proposing an amendment to the Constitution of the United States to insure that due process and equal protection are afforded to an individual from the moment of conception.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), that the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution only if ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by Congress:

**ARTICLE\_\_\_\_\_**

"Section 1: Neither the United States nor any state shall deprive any human being, from the moment of conception, of life without due process of law; nor deny to any human being, from the moment of conception, within its jurisdiction, the equal protection of the laws.

"Section 2: Neither the United States nor any state shall deprive any human being of life on account of age, illness, or incapacity.

"Section 3: Congress and the several states shall have power to enforce this article by appropriate legislation.""

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:**

That the above proposed resolution be forwarded to Montana's congressional delegation to be sponsored in their respective houses, and

**BE IT FURTHER RESOLVED**, that copies of this joint resolution be sent by the secretary of state to the members of Montana's congressional delegation.

Approved February 23, 1974

**HOUSE JOINT RESOLUTION NO. 39**

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING PASSAGE OF A CONGRESSIONAL BILL RELATING TO VOCATIONAL TRAINING FOR POTENTIAL PAROLEES FROM STATE PENAL INSTITUTIONS.

WHEREAS, the recent riots and disturbances at Attica, Rahway, and other correctional institutions stand as vivid testimony to the failure of America's prison system, and

WHEREAS, an estimated forty to seventy-five percent of our "rehabilitated" offenders commit additional and often more serious crimes upon release, and

WHEREAS, a bill has been introduced in the United States Congress designed to close the gap between rhetoric and the reality of true criminal reform by creating training and employment programs for offenders in order to increase their chances of obtaining and keeping a job upon release and by improving correctional staff through better training and recruitment, and

WHEREAS, if the bill passes certain moneys will be made available to the states for operation of vocational education and manpower development and training programs for the incarcerated of state penal institutions.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the congressional delegation be requested to support HR 3373 so that funds will be made available for state implementation of these programs, and

BE IT FURTHER RESOLVED, that if the congressional measure is passed, programs be instituted in the state to implement the following goals:

- (1) Provide inservice vocational training for staff;
- (2) Provide vocational training and counseling for potential parolees who qualify for vocational training and wish to be trained;
- (3) Provide incentive by furnishing allowances to be set aside for post release adjustment purposes;
- (4) Provide post release specialists whose case load would consist of trainees who engaged in the program while incarcerated;
- (5) Provide vocational counselors who specialize in in-depth counseling of those in need of rehabilitative services, or who specialize in preparing adults for entry into occupations and trades;
- (6) Provide that such allocated funds be supervised by experienced vocational educators for the conduct of vocational education programs;

(7) Provide for referral to post prison training, enabling parolee trainees to become job entry competent; and

(8) Provide for attitudinal training for trainees, both pre and post release.

BE IT FURTHER RESOLVED, that copies of this resolution be sent to Senators Mike Mansfield and Lee Metcalf and Congressmen John Melcher and Richard Shoup.

Approved March 7, 1974

## HOUSE JOINT RESOLUTION NO. 42

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA TO THE CONGRESS OF THE UNITED STATES CONCERNING THE GREAT NEED FOR IMPROVED RAIL PASSENGER SERVICE; AND FOR THE RE-ESTABLISHMENT OF THE RAILWAY MAIL SERVICE.

WHEREAS, the United States has entered into a long period in which its energy resources must be conserved and wisely used, and

WHEREAS, measured in dollar cost and the relative amounts of energy resources consumed, travel by rail is much less costly than travel by automobile, and

WHEREAS, travel by rail is not now feasible for most people due to the severely limited number of passenger trains and locations which they serve, and

WHEREAS, freedom of movement is necessary to maintain the familial, social, business, and governmental ties which bind us as a nation.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the legislative assembly of the state of Montana, recognizing the public interest in promoting the increase of persons traveling by rail, endorses the expansion of Amtrak for the restoration of full passenger service by rail along all U.S. rail lines where there is a need, and

BE IT FURTHER RESOLVED, that the legislative assembly of the state of Montana urges the Congress of the United States to pass legislation promoting passenger travel by rail, and that such legislation include the re-introduction of mail service by rail, and the re-establishment of the "name trains", and

BE IT FURTHER RESOLVED, that the secretary of state be instructed to send copies of this resolution to the Honorable Mike Mansfield and Lee Metcalf, Senators from the state of Montana and the Honorable John D. Melcher and Richard G. Shoup, Congressmen from the state of Montana along with a request that the contents of this resolution be transmitted to the other members of Congress.

Approved February 16, 1974



**HOUSE JOINT RESOLUTION NO. 44**

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA DECLARING THE MONTANA STATE LEGISLATURE'S UNALTERABLE OPPOSITION TO REGISTRATION AND CONFISCATION OF FIREARMS.

WHEREAS, the right of an individual to keep and bear arms is fundamental to the preservation of freedom and is guaranteed by the Constitution of the United States, and

WHEREAS, firearms are, always have been, and always will be very much a part of the way of life in the great state of Montana, and

WHEREAS, the private ownership of firearms, including handguns, is the last line of defense against the criminal element, and

WHEREAS, the report of the National Advisory Commission on Criminal Justice Standards and Goals, issued in August, 1973, advocates, among other things, the confiscation of all privately owned handguns, and

WHEREAS, the people of Montana having seen that federal firearm registration is leading us closer to federal confiscation of firearms.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the legislature of the state of Montana go on record as being unalterably opposed to registration and confiscation of firearms in general and specifically to the recommendations of the National Advisory Commission on Criminal Justice Standards and Goals, and

BE IT FURTHER RESOLVED, that a copy of this joint resolution be sent to the President of the United States, to the Vice-President of the United States, to Montana's Senators and Representatives in Congress, and to all state legislatures.

Approved February 16, 1974

**HOUSE JOINT RESOLUTION NO. 47**

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE LEGISLATIVE COUNCIL TO STUDY THE FEASIBILITY OF INTEGRATING INTO ONE STATE AGENCY THOSE ADMINISTRATIVE FUNCTIONS OF THE STATE GOVERNMENT RELATING TO HUMAN RESOURCES.

WHEREAS, several departments of Montana government deliver health and welfare services, and

WHEREAS, functions of those departments often overlap, duplicate and, at times, conflict with each other.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the legislative council is requested to conduct a study of the feasibility of creating a department of human resources in the state of Montana and report the results of this study to the second session of the forty-fourth legislative assembly.

Approved March 16, 1974

## HOUSE JOINT RESOLUTION NO. 51

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE COMMITTEE ON PRIORITIES TO ASSIGN THE LEGISLATIVE COUNCIL TO CONDUCT A STUDY OF THE PREMIUM RATE STRUCTURE, ESPECIALLY UNDER PLAN TWO (2) AND UNDER PLAN THREE (3), OF THE WORKMEN'S COMPENSATION ACT AND TO HAVE IT REPORT ITS FINDINGS AND RECOMMENDATIONS TO THE FIRST REGULAR SESSION OF THE FORTY-FOURTH LEGISLATURE.

WHEREAS, there have been questions raised by employers and others concerning the premium rate structure, especially under Plan Two (2) and under Plan Three (3), of the Workmen's Compensation Act, and

WHEREAS, there exists no available study upon which to base enlightened decisions or legislation and,

WHEREAS, problems have occurred in the area of claims adjustment.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the committee on priorities is hereby requested to assign the Legislative Council to conduct a study of the premium rate structure, especially under Plan Two (2) and under Plan Three (3), of the Workmen's Compensation Act, and

BE IT FURTHER RESOLVED, that the actions and methods of private claims adjusters be scrutinized in the study, and

BE IT FURTHER RESOLVED, that the Legislative Council submit a written report of its findings and recommendations for consideration by the first regular session of the Forty-fourth Legislature.

Approved March 8, 1974

**HOUSE JOINT RESOLUTION NO. 52**

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA COMMENDING AND SUPPORTING THE SUPPLEMENTAL SECURITY INCOME PROGRAM AND COMMENDING THE AMERICAN NATIONAL RED CROSS FOR THEIR PARTICIPATION IN THE PROGRAM.

WHEREAS, the Federal Government has established a program to aid and assist those people in financial need who are 65 or older or who are blind and disabled, and

WHEREAS, this assistance will take the place of Montana's current assistance and may include assistance money from the state of Montana to insure that the State's Standard of Assistance is met, and

WHEREAS, this program is called supplemental security income and will be administered by the Social Security Administration, and

WHEREAS, the Federal Government has asked the American National Red Cross to assist in and spearhead the identification of those in need of assistance.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the state of Montana commend and support the program of supplemental security income, and

BE IT FURTHER RESOLVED, that the American National Red Cross be commended for their participation in this program, and

BE IT FURTHER RESOLVED, that a copy of this resolution be sent to the Honorable Mike Mansfield and Lee Metcalf, U.S. Senators from Montana, the Honorable John Melcher and Richard Shoup, U.S. Representatives from Montana, the Honorable Thomas L. Judge, Governor of the state of Montana and Mr. George Elsey, President of the American National Red Cross, Washington, D.C.

Approved March 1, 1974

**HOUSE JOINT RESOLUTION NO. 53**

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA RECOGNIZING THE POTENTIAL IMPACT OF SUMMER WEATHER MODIFICATION ON MONTANA'S WATER RESOURCES, ENVIRONMENT, AGRICULTURAL INDUSTRY AND ECONOMY, AND ENDORSING RESEARCH EFFORTS TO BETTER UNDERSTAND THIS TECHNOLOGY AND ITS IMPACTS.

WHEREAS, the modification of weather during the summer growing

season is an infant technology in need of intensive research concerning hail suppression and rainfall augmentation, and

WHEREAS, under the high plains cooperative program, the United States Bureau of Reclamation is in the process of selecting sites for intensive research into summer cloud seeding within the arid high plains region, and associated agricultural, environmental, social and economic consequences, and

WHEREAS, specific knowledge is needed concerning the potential agricultural, environmental, economic and social impacts of summer weather modification programs, and

WHEREAS, accelerated programs of weather modification in neighboring states, downriver water shortages of streams with headwaters in the mountains of Montana, and the potential value of hail suppression and growing season rainfall augmentation to agriculture will bring increasing pressures for operational weather modification activities in Montana.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the legislature endorses and encourages efforts by state agencies, the university system and independent groups to secure a field test site within Montana for the United States Bureau of Reclamation, high plains cooperative program. Research conducted at this field test facility will significantly reduce the scientific uncertainties which surround the technological aspects of summer weather modification. Additionally, such weather modification research will analyze the potential agricultural, environmental, social and economic impact upon Montana.

BE IT FURTHER RESOLVED, that cooperation of state agencies and the university system with the Bureau of Reclamation in the conduct of the high plains experiment in Montana would result in valuable knowledge for Montana and the region and is, therefore, desirable.

BE IT FURTHER RESOLVED, that a copy of this joint resolution be sent to the Montana Congressional Delegation, the Secretary of the Department of Interior, and the Director of the Bureau of Reclamation.

Approved March 6, 1974

## HOUSE JOINT RESOLUTION NO. 54

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA INFORMING THE MONTANA CONGRESSIONAL DELEGATION AND APPROPRIATE FEDERAL AGENCIES THAT DEMANDS FOR WATERS OF THE YELLOWSTONE BASIN ARE INCREASING AND THAT THE CONSEQUENCES OF LARGE-SCALE CONSUMPTIVE WITHDRAWALS ARE POORLY UNDERSTOOD AND THAT FEDERAL SUPPORT FOR DETAILED FIELD INVESTIGATIONS IS NEEDED AND IN ORDER.

WHEREAS, over 620,000 acre-feet annually of Yellowstone Basin water has been optioned for industrial purposes by the Bureau of Reclamation, and

WHEREAS, other energy industry water appropriation filings total over 400,000 acre-feet annually of Yellowstone Basin water, and

WHEREAS, there is general public concern that the future of other uses of Yellowstone River water, notably agricultural irrigation, municipal water supplies, fisheries and recreation, is clouded by imperfectly known impacts of large-scale consumption, and

WHEREAS, the legislature has enacted a three-year moratorium on the issuance of permits for large diversions of Yellowstone River basin water pending a full study by the Department of Natural Resources and Conservation of the best long-term management policies for the basin.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Montana Congressional delegation be notified of these state concerns, and

BE IT FURTHER RESOLVED, that Montana agencies must rightfully seek federal funds to conduct the research and evaluations necessary to protect the integrity of the Yellowstone River system, and

BE IT FURTHER RESOLVED, that a copy of this joint resolution be sent to the Montana Congressional delegation, the Secretary of the Department of Interior, the director of the Atomic Energy Commission, the federal chairman of the Old West Regional Commission and the program manager, Northern Great Plains Resources Program, soliciting their support for Montana research proposals.

Approved March 15, 1974

## HOUSE JOINT RESOLUTION NO. 56

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING CONGRESS TO RESCIND THE DAYLIGHT SAVING TIME LAW DURING THE WINTER MONTHS AND REQUESTING THE DEPARTMENT OF TRANSPORTATION TO EXEMPT MONTANA FROM DAYLIGHT SAVING TIME.

WHEREAS, the recent midwinter switch to daylight saving time has resulted in endangering the lives of and has imposed hardships on those who must travel in the dark to school or work, and

WHEREAS, due to the severe winter climate in Montana and the fact that it remains darker longer here than in more southerly parts of the

United States, it is doubtful that any saving of energy is being realized by the time changeover, and

WHEREAS, there is no substantive proof that any substantial energy saving is made by the switch to daylight saving time nationwide:

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That Congress is urged to rescind the daylight saving time law during the winter months, and

BE IT FURTHER RESOLVED, that the department of transportation is requested to seek exemption for Montana from daylight saving time from the first Sunday of November to the first Sunday of March, and

BE IT FURTHER RESOLVED, that a copy of this joint resolution be sent to the President of the United States, to Montana's congressional delegation, to Claude Brinegar, secretary of the Department of Transportation and to Governor Thomas Judge.

Approved March 5, 1974

## HOUSE JOINT RESOLUTION NO. 59

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA INSTRUCTING THE BOARD OF PUBLIC EDUCATION AND THE BOARD OF REGENTS OF HIGHER EDUCATION TO DEVISE A MASTER PLAN FOR ENRICHING THE TEACHER TRAINING PROCESS IN THE AREA OF ETHNIC STUDIES.

WHEREAS, the training of Montana teachers should provide opportunity to learn about the cultures of ethnic minorities which are outside the mainstream of European immigration and which have contributed to the cultural diversity of Montana or of the United States, and

WHEREAS, any teachers whose students include representatives of such an ethnic group need a background in the ethnic culture in order to adequately relate to those pupils, and

WHEREAS, for instance, Mexican-Americans constitute a sizeable minority group in parts of Montana and Mexican-American children make up a substantial part of the enrollment in public schools in these areas, and

WHEREAS, the cultural differences between these Mexican-American pupils and the rest of the community create problems for the schools, where a greater understanding of Mexican-American culture by the teachers in these schools would help solve the problems.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the board of public education and the board of regents of higher

education are directed to devise, in consultation with members of representative ethnic minorities outside the mainstream of European immigration, and to implement a specific comprehensive plan for a statewide program that will:

(1) provide teacher-training institutions in Montana with adequate resources to prepare teachers to understand the history, culture, sociology, and values of those ethnic minorities represented in large numbers in Montana, as the members of such minorities see them;

(2) provide, in any school where a non-European ethnic group constitutes fifteen percent (15%) or more of the school enrollment, training in the culture, history, and values of that ethnic group for all the teachers in the school; and

(3) provide a means by which representatives of such ethnic groups may be utilized in the preparation and presentation of courses planned under the guidelines of this resolution.

The boards may submit a joint plan.

BE IT FURTHER RESOLVED, that copies of this resolution be sent to the board of public education and the board of regents of higher education of the state of Montana.

Approved March 13, 1974

## HOUSE JOINT RESOLUTION NO. 60

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA INSTRUCTING THE BOARD OF PUBLIC EDUCATION AND THE BOARD OF HIGHER EDUCATION TO DEVISE A MASTER PLAN FOR ENRICHING THE BACKGROUND OF ALL PUBLIC SCHOOL TEACHERS IN AMERICAN INDIAN CULTURE.

WHEREAS, the 1972 Montana constitution commits the educational policy of the state to the preservation of the cultural integrity of the American Indians; and

WHEREAS, the American Indian has been fundamental in the formation, flavor, and history of the state of Montana, and

WHEREAS, the American Indian in Montana is the product of a unique psychological history which is understood only by people who have either experienced or studied history from the viewpoint of the American Indian, and

WHEREAS, the problems of American Indians are compounded by a general lack of understanding of the unique background of Indian students and their families, and

WHEREAS, both the teaching force in Montana and their student popu-

lation are at present substantially undereducated in the history, values and culture of American Indians as seen by Indians, and

WHEREAS, the history of Montana and the current problems of the state cannot be adequately understood apart from an understanding of the history, problems and contributions of the American Indian,

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Board of Public Education and the Board of Regents of Higher Education are directed to devise, in consultation with Indian people, a specific comprehensive plan for a statewide program that will:

(1) provide teacher-training institutions in Montana with adequate resources to prepare teachers to understand the history, culture, sociology, and values of American Indians as seen by Indians,

(2) provide inservice training, planned in consultation with Indian people, for those teachers who cannot return to an institution of higher education for formal courses in Indian studies,

(3) provide means by which all public school teachers in Montana may, within ten (10) years of the adoption of this resolution, receive training in Indian studies as directed in this resolution,

(4) provide all public schools in Montana, within ten (10) years, with a program of study that includes American Indian history, culture, sociology, and values as seen by Indians,

(5) provide a means by which qualifications for teacher certification may include, within ten (10) years, adequate training in Indian studies to prepare the certified teacher to understand the unique background of his or her Indian students, and

(6) provide a means by which Indian people may be utilized in the preparation and presentation of the courses planned under the guidelines of this resolution.

Such plans shall consider, as is appropriate to the authority of each board, measures in teacher training curriculum, teacher certification, continuing education for teachers, and such other measures as will further the policies of the constitution and this resolution. The boards may submit a joint plan.

Approved February 21, 1974

## HOUSE JOINT RESOLUTION NO. 62

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE APPOINTMENT OF SELECT COMMITTEES OF THE SENATE AND HOUSE OF REPRESENTATIVES TO STUDY THE EXISTING LAWS OF THE STATE OF MONTANA IN ORDER TO DETERMINE WHAT CHANGES SHOULD BE MADE IN THESE LAWS IN ORDER



**HOUSE JOINT RESOLUTION NO. 63**

TO ACHIEVE THE EQUALITY OF THE SEXES UNDER THE LAWS OF MONTANA, AND TO REPORT THEIR FINDINGS AND THEIR PROPOSALS FOR CHANGES IN THE LAW TO THE 1975 SESSION OF THE FORTY-FOURTH MONTANA LEGISLATURE.

WHEREAS, article II, section 4, of the Montana constitution prohibits discrimination against any person in the exercise of his civil or political rights on account of sex, and

WHEREAS, principles of democratic government and the proper respect due both sexes require that both the rights and responsibilities of citizenship be assumed equally by men and women, and

WHEREAS, numerous statutes currently exist in the Revised Codes of Montana 1947, which distinguish between persons on the basis of sex in terms of their rights and responsibilities under the law, and

WHEREAS, these statutes distinguishing between persons on the basis of sex are in many cases interrelated with many substantive laws and procedures necessary to the effective functioning of state and local government, and

WHEREAS, care and study are required to eliminate discriminatory provisions of the Revised Codes of Montana 1947, while preserving the essential features of these laws.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Speaker of the House of Representatives is requested to appoint a select committee of five (5) members and that the Committee on Committees in the Senate is requested to appoint a select committee of five (5) members to meet jointly during the period between the close of the final session of the Forty-third Legislature and the opening of the first session of the Forty-fourth Legislature, and

BE IT FURTHER RESOLVED, that the respective select committees acting jointly conduct a study and thorough analysis of the statutes currently enacted in the Revised Codes of Montana 1947, which distinguish between persons on the basis of sex in order to determine what changes should be made in these laws to achieve true legal equality of the sexes while preserving for all the people of Montana those essential protections which orderly government provides for its citizens, and

BE IT FURTHER RESOLVED, that the joint select committee report the results of its study and its recommendations for changes in the existing law together with proposed legislation to effect these changes to the Senate and the House of Representatives no later than 5 p.m. on the fifth legislative day of the 1975 session of the Forty-fourth Legislature.

Approved March 14, 1974

**A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE UNITED STATES DEPARTMENT OF THE INTERIOR TO CONSIDER ALTERNATE WAYS OF MARKING ABANDONED OIL AND GAS WELLS.**

WHEREAS, current federal regulations require all oil and gas lessees of the Department of the Interior to plug and cap abandoned wells and mark each well site with a pipe standing at least four (4) feet above the ground; and

WHEREAS, many of these abandoned well markers in Montana stand in lands where the surface is devoted to agricultural uses; and

WHEREAS, the standing pipe markers disrupt sound agricultural land management by establishing weed patches interfering with irrigation, and posing a hazard to crop spraying; and

WHEREAS, alternate methods of marking abandoned wells below plow depth, or at least not above ground levels, would adequately protect the public interest in those actively farmed areas.

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:**

That the Secretary of the Interior of the United States is urged to propose an appropriate amendment to Title 30, Code of Federal Regulations, section 221.22, to delete the requirement that each abandoned oil or gas well be marked by a pipe standing at least four (4) feet above ground level, when the land involved is in agricultural use.

**BE IT FURTHER RESOLVED**, that if a notice of proposed rule making is issued by the Secretary of the Interior in response to this resolution, that the Montana Commissioner of Agriculture and the director of Natural Resources and Conservation are urged to participate in the rule making process and to further the policies declared in this resolution.

**BE IT FURTHER RESOLVED**, that the Secretary of State send copies of this joint resolution to the Honorable Rogers C. B. Morton, Secretary of the Interior, to the Honorable Mike Mansfield and Lee Metcalf, Senators from the state of Montana, and to the Honorable John Melcher and Richard Shoup, Congressmen from the state of Montana.

Approved March 4, 1974

## **HOUSE JOINT RESOLUTION NO. 66**

**A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT THE GOVERNOR APPOINT A BLUE RIBBON COMMITTEE TO STUDY THE FUTURE DIRECTION, SCOPE, AND FINANCIAL REQUIREMENTS IN THE FIELD OF MENTAL SERVICES THAT**

THE STATE OF MONTANA PROVIDES, AND SHOULD PROVIDE, TO THE CITIZENS OF THE STATE.

WHEREAS, the treatment and prevention of mental illness is a direct and important obligation of the government of the state of Montana; and

WHEREAS, mental ill-health of any and all degrees incurs social and economic costs for every citizen of Montana as well as the unfortunate people directly involved; and

WHEREAS, all current statistics, trends and projections indicate that the scope of state involvement will continue to increase; and

WHEREAS, new methods of treatment and new modes of preventative action in the field of mental illness require a coherent but flexible plan that can incorporate any such new directions; and

WHEREAS, the state of Montana and its legislature, does not now have an adequate and comprehensive plan for future developments in the field of mental health.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That a blue ribbon committee be appointed by the governor to conduct a thorough study of the current and probable future problems, needs and opportunities the government of the state of Montana will experience in the field of mental health in the next five (5) years and present its findings, conclusions, and recommendations to the 1975 legislature.

Approved March 14, 1974

## HOUSE JOINT RESOLUTION NO. 67

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE COMMITTEE ON PRIORITIES TO ASSIGN A STUDY CONCERNING COORDINATING AND PROVIDING CHILD DEVELOPMENT PROGRAMS TO THE APPROPRIATE STANDING COMMITTEE AND TO HAVE IT REPORT ITS FINDINGS AND RECOMMENDATIONS TO THE FIRST REGULAR SESSION OF THE FORTY-FOURTH LEGISLATURE.

WHEREAS, there exists a definite need in the state of Montana to plan child development programs and to coordinate the delivery of children's services, and

WHEREAS, child development includes several components: physical health services, mental health services, diagnostic services, day care services, services for handicapped children, parent education, preschool education, and social services, and

WHEREAS, responsibility for children's services is divided among many state agencies resulting in fragmented programs that often duplicate services and also result in fewer services reaching the children and families for whom they are designed, and

WHEREAS, no ready solution is at hand.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Committee on Priorities is requested to assign the appropriate standing committee to conduct a study of the problem of providing and coordinating child development programs specifically focusing on alternative three (3) of the 1974 Suggested State Legislation published by the Council of State Governments, and

BE IT FURTHER RESOLVED, that the committee submit a written report containing its findings, recommendations and a draft of any proposed legislation for consideration by the first regular session of the Forty-fourth Legislature.

Approved March 16, 1974

### **HOUSE JOINT RESOLUTION NO. 73**

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA CALLING FOR THOROUGH ECONOMIC ANALYSIS IN ENVIRONMENTAL IMPACT STATEMENTS AND DIRECTING THE ENVIRONMENTAL QUALITY COUNCIL TO ELICIT SUCH ANALYSIS FROM STATE AGENCIES.

WHEREAS, the Montana Environmental Policy Act, enacted by the 1971 Legislative Assembly, requires a full assessment of major agency actions with significant effects on the human environment; and

WHEREAS, the Montana Environmental Policy Act and the guidelines adopted pursuant to that act by the state Environmental Quality Council define human environment to include social, economic and cultural factors as well as aesthetic and environmental factors; and

WHEREAS, the act and guidelines further require a rigorous consideration of all alternative actions and the full range of their economic and environmental costs and benefits; and

WHEREAS, full economic analysis has not typically accompanied agency actions requiring environmental impact statements, thus indicating a failure on the part of the Environmental Quality Council and state agencies to fully implement the Montana Environmental Policy Act; and

WHEREAS, it is a matter of serious concern to the legislature that this enactment be fully implemented in all respects,

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That all agencies of state government are hereby directed to achieve forthwith the full implementation of the Montana Environmental Policy Act including the economic analysis requirements of sections 69-6504 through 69-6514 and guidelines for fully integrated environmental and economic analysis of major actions with significant effects on the human environment; and

BE IT FURTHER RESOLVED, that economic analysis shall accompany environmental impact statements as required by the foregoing sections of the act and shall encompass an analysis of the costs and benefits to whomsoever they may accrue, including considerations of employment, income, investment, energy, the social costs and benefits of growth, opportunity costs, and the distribution effects; and

BE IT FURTHER RESOLVED, that the Environmental Quality Council is directed to monitor agency compliance with this resolution and to report to the 1975 Legislative Assembly the extent of agency implementation of the act's requirements for full economic analysis; and

BE IT FURTHER RESOLVED, that the executive director and staff are directed to fully perform the duties required by section 69-6514 to give consideration to economic goals and requirements of the state in implementation of the Montana environmental policy act; and

BE IT FURTHER RESOLVED, that copies of this resolution be sent to the Governor, the Environmental Quality Council, and all state agencies.

Approved March 16, 1974

## HOUSE JOINT RESOLUTION NO. 75

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE DEPARTMENTS OF AGRICULTURE, LIVESTOCK, AND ADMINISTRATION TO PREPARE A CONSTRUCTION PROJECT REQUEST FOR A PROPOSED NEW AGRICULTURE-LIVESTOCK BUILDING.

WHEREAS, the agriculture-livestock business is Montana's largest industry, and

WHEREAS, the present buildings housing the Departments of Agriculture and Livestock are outdated, inefficient and inadequate in terms of required space, and

WHEREAS, a combined facility would be more efficient and more economical as well as provide adequate space for departmental functions such as serving the public more proficiently and productively.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Departments of Agriculture, Livestock and Administration are requested to prepare a construction project request for a new agriculture-livestock building including justification, project description and explanation, estimated budget, and method of financing to be included in the 1975-1977 capital construction program which is to be submitted to the 1975 session of the legislature, and

BE IT FURTHER RESOLVED, that copies of this resolution be sent to the directors of the Departments of Agriculture, Livestock, and Administration by the Clerk of the House.

Approved March 7, 1974

## **HOUSE JOINT RESOLUTION NO. 77**

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE PRIORITIES COMMITTEE TO DESIGNATE AN APPROPRIATE STANDING SUBCOMMITTEE TO MAKE A COMPREHENSIVE STUDY OF MONTANA'S FIRE PROTECTION LAWS.

WHEREAS, Montana is faced with a rapidly growing and complex land and structural fire protection problem, and

WHEREAS, the problem consists of a myriad of specific fire situations, including: city structural fire protection, scattered rural structural fire protection, grassland and agricultural fires, and fires involving the forests and related structures within and adjacent to the forests, and

WHEREAS, a patchwork of overlapping, complex, and obsolete laws and regulations has emerged, creating confusion to landowners and the various fire protection agencies, and resulting in duplication of services and expenses.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Priorities Committee designate an appropriate standing subcommittee to make, in cooperation with the Department of Natural Resources and Conservation and other interested fire protection groups and agencies, a comprehensive study and review of Montana's existing fire protection laws, and recommend to the 1975 legislative session a revision of those laws to provide a proper foundation for an organized coordinated fire protection program for all of Montana.

Approved March 14, 1974

## **HOUSE JOINT RESOLUTION NO. 79**

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF

**REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING  
THE MONTANA CONGRESSIONAL DELEGATION TO  
STREAMLINE THE FEDERAL LAWS RELATING TO THE MARKET-  
ING OF LIVESTOCK.**

WHEREAS, the Packers and Stockyards Act of 1921 and rules and regulations promulgated thereunder have provided necessary regulation for the livestock marketing industry in the United States, and

WHEREAS, the continued protection of a free-market concept for the marketing of livestock is important to the economy of the nation and the growth and advancement of the livestock industry as a whole, and

WHEREAS, numerous problems have arisen with the administration of this act due to major changes and advances in methods of marketing livestock over the years since passage of this legislation, and

WHEREAS, since many provisions of this law have become obsolete by passage of time and the implementation of major changes in the method of livestock marketing, rendering many provisions of this law administratively unfeasible and economically unsound for the regulation of livestock markets throughout the nation, and

WHEREAS, total revision of the 1921 act and regulations promulgated thereunder represents the ideal solution to the problem, and

WHEREAS, this resolution was adopted by the Western Council of State Government consisting of elected representatives of the thirteen western states.

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE  
HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:**

That there exists an immediate need in the interest of the livestock industry and the consumers of this great nation to propose and pass new legislation revising and updating the 1921 Packers and Stockyards Act and regulations promulgated thereunder to reflect the major changes which have taken place in this industry over the years, and

BE IT FURTHER RESOLVED, that the new act guarantee and insure the continued existence of a free, open and competitive livestock marketing system to render uniform laws and regulations which will foster and protect the free movement of livestock throughout the nation and which will insure that no trade barriers are created to impede the movement of livestock from state to state, and

BE IT FURTHER RESOLVED, that the Committee on Natural Resources and Land Use Development give its support to the preparation of new legislation to eliminate inconsistencies and to streamline the regulatory protection afforded by the federal government relating to the sale and movement of livestock, and

BE IT FURTHER RESOLVED, that a code of business practices for the regulation of practices which will reflect current industry practices and which will provide ample protection for the seller and purchaser of livestock be set forth in said new proposed legislation and that uniform legis-

lation be proposed for implementation by the states to render uniform livestock marketing practices and regulations throughout the nation, and

BE IT FURTHER RESOLVED, that the livestock industry in its various forms be encouraged by this body to actively contribute to the preparation of new legislation to insure that the new legislation will accurately reflect existing business practices and to foster and protect the livestock industry of the nation, and

BE IT FURTHER RESOLVED, that a copy of this resolution be transmitted to the Congressional delegation of the state of Montana.

Approved March 8, 1974

## HOUSE JOINT RESOLUTION NO. 80

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE APPOINTMENT OF A COMMITTEE TO STUDY THE OPERATION, OBJECTIVES AND FINANCING OF INTER-SCHOOL ACTIVITIES IN MONTANA.

WHEREAS, the operation and management of inter-school activities is conducted by an association of the various public and private junior high schools and high schools in Montana without direct government supervision, and

WHEREAS, it is deemed advisable that the public be fully informed of the operation, objectives and financing of such activities which are closely related to the educational process in the public schools of Montana.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Superintendent of Public Instruction be requested to work with five other persons as appointed below as a committee to investigate and study the operation, objectives and financing of inter-school activities both athletic and non-athletic, in the public junior high schools and high schools of Montana and to report the results of such investigation and study to the 44th Montana Legislative Assembly on the opening day of its 1975 legislative session, and

BE IT FURTHER RESOLVED, That the five committee members shall be appointed in the following manner and in the following chronological order:

(a) the majority floor leader of the senate shall appoint one (1) senator from his political party. The minority leader of the senate shall then appoint one (1) senator from his political party not from the same United States congressional district as the member appointed by the presiding officer.

(b) the presiding speaker of the house of representatives shall appoint



one (1) house member from his political party. Then, the minority leader in the house of representatives shall appoint one (1) house member from his political party not from the same United States congressional district as the member appointed by the speaker;

(c) the governor shall appoint one (1) member from the public-at-large, who shall not be an employee of or employed by, with or without compensation, a body directly concerned with education.

Each to be reimbursed for his actual and necessary expenses incurred while attending meetings and they shall receive no other compensation. The legislative priority committee shall set the number of meetings, and

BE IT FURTHER RESOLVED, that said committee may request and shall receive the services of the Legislative Auditor and the Legislative Council if it so desires in the performance of its investigation and study.

Approved March 9, 1974

## HOUSE JOINT RESOLUTION NO. 81

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA AMENDING THE JOINT RULES TO PRESCRIBE FEES FOR LEGISLATIVE PROCEEDINGS.

BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA THAT A NEW RULE 8-8 BE ADDED TO THE JOINT RULES WHICH READS AS FOLLOWS:

8-8. Pursuant to the authority established in sections 43-901 through 43-904, the following fee schedule is established for the legislative proceedings:

One complete set of the proceedings of any regular session...one hundred dollars (\$100).

One complete set of the proceedings of any special session...twenty-five dollars (\$25).

Single copies of bills, resolutions or amendments may be purchased according to the length of the document as follows:

- 1 - 15 pages.....twenty-five cents (\$.25)
- 16 - 40 pages.....fifty cents (\$.50)
- 41 - 100 pages.....seventy-five cents (\$.75)
- 100 - 200 pages.....one dollar (\$1)
- Over 200 pages.....two dollars (\$2)

Single copies of status sheets, status of proceedings, of subject indexes...ten cents (\$.10).

Approved March 15, 1974

**HOUSE JOINT RESOLUTION NO. 82**

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA DIRECTING THE LEGISLATIVE COUNCIL TO UNDERTAKE A STUDY OF ETHICAL CONSIDERATIONS AFFECTING ELECTED OFFICIALS AND PUBLIC EMPLOYEES AND TO PROPOSE LEGISLATION ESTABLISHING A CODE OF OR CODES OF ETHICS FOR ELECTED OFFICIALS AND PUBLIC EMPLOYEES, PURSUANT TO THE MANDATE OF ARTICLE XIII, SECTION 4, OF THE MONTANA CONSTITUTION.

WHEREAS, it is essential to the fair and efficient administration of government that the general public place justifiable trust in the integrity and ethical behavior of elected officials and public employees, and

WHEREAS, Article XIII, Section 4 of the Montana Constitution requires that the legislature provide a code of ethics prohibiting conflict between public duty and private interest for members of the legislature and all state and local officers and employees, and

WHEREAS, such a code, to be both comprehensive and workable must make provision for the varied circumstances and requirements involved in the many types of public office and public employment, and

WHEREAS, the full implications of any proposed code of ethics must be carefully studied and evaluated if any workable system of ethics is to be achieved.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council is directed to undertake a study of ethical considerations affecting the conduct of elected officials, including legislators, and public employees and propose legislation to the next regular session of the legislature establishing a code of ethics or codes of ethics for elected officials and public employees, pursuant to the mandate of the Montana Constitution.

Approved March 7, 1974

**SENATE JOINT RESOLUTION NO. 41**

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA TO ADOPT JOINT RULES TO GOVERN ITS PROCEEDINGS.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the following joint rules are adopted:

## CHAPTER 1

## Presiding Officer - Decorum, Order and Debate

1-1. The presiding officer of the senate is the president and the presiding officer of the house of representatives is the speaker. The presiding officer of each house shall take the chair on every legislative day at the hour to which that house adjourned at the last sitting. After call to order, prayer by the chaplain and roll call, a report on the journal for the preceding legislative day shall be given in the presence of a quorum, and each house shall proceed with the regular order of business.

1-2. The presiding officer, or any member acting as presiding officer, of each house shall preserve order and decorum, and in case of disturbance or disorderly conduct, may order the galleries or lobbies to be cleared.

1-3. The presiding officer of each house has general control and direction of the hall, chamber, rooms, passages and corridors of the house over which he presides. Reporters on assignment in either house are subject to placement by the presiding officer.

1-4. The presiding officer of each house shall decide all questions of order, subject to an appeal by any member seconded by two other members. No member may speak more than once on an appeal without the consent of a majority of the house of which he is a member.

1-5. When a member desires to speak he shall rise and address the presiding officer and, being recognized, shall speak standing in his place unless the presiding officer grants permission to speak from some other place on the floor. When two or more members rise at the same time the presiding officer shall name the member who is to speak first.

1-6. When a member has been called to order, he shall sit down until the presiding officer determines whether he is in order or not. If the member is called to order for words spoken in debate, the language excepted to shall be taken down in writing by the chief clerk or secretary.

1-7. Questions of privilege are: first, those affecting the collective rights, safety, dignity, and integrity of the proceedings of either house; and second, those affecting the rights, reputation and conduct of individual members of either house in their capacity as members. A question of privilege affecting either house collectively takes precedence over a question of privilege affecting an individual member.

1-8. The presiding officer of each house shall sign all subpoenas approved or issued by the house over which he presides. The business manager and the presiding officer will co-sign all payrolls.

1-9. (1) A communication or paper shall be addressed to the presiding officer, and shall bear the name of the person submitting it. When the reading of a paper is called for and a member objects, it shall be determined by a vote of the house without debate. This subsection does not apply to bills, or to communications from the governor or the other house.

(2) A paper for or against proposed legislation may not be placed on the desks of the members or circulated within the chamber unless the person responsible has signed it and has received permission from the presiding officer to distribute it in the house concerned.

1-10. When the presiding officer is a member of the house over which

he is presiding he shall vote as any other member, and may not vote a second time.

## CHAPTER 2

### Meetings, Quorums and Attendance

2-1. The hour of meeting of the senate is 1:30 p.m. unless otherwise ordered by the senate. The hour of meeting of the house of representatives is 1:30 p.m. unless otherwise ordered by the house.

2-2. Lobbying on the floor of the senate or house of representatives is prohibited during the session and within one hour prior to the commencement of a session and within one-half hour after recess or adjournment.

2-3. The sessions of the legislature and of the committee of the whole, all committee meetings, and all hearings shall be open to the public. (Montana Constitution, Art. V, Sec. 10(3))

2-4. Neither house shall, without the consent of the other, adjourn or recess for more than three days, nor to any other place than that in which the two houses shall be sitting. (Montana Constitution, Art. V, Sec. 10(5))

2-5. A majority of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and compel the attendance of absent members, in such manner and under such penalties as each house may prescribe. (Montana Constitution, Art. V, Sec. 10(2))

2-6. Unless he is excused, a member of the house or senate shall be present at every sitting of the house of which he is a member.

2-7. In the absence of a quorum, a majority of members present in either house may compel the attendance of absent members by ordering a call of the house of which they are members.

2-8. If a quorum is present, five members of the senate may order a call of the senate, and fifteen members of the house of representatives may order a call of the house.

2-9. On a call of either house, a member who refuses to attend may be arrested by the sergeant-at-arms or any other person, as the majority of such members present shall direct. When the attendance of an absent member is secured after a call of either house, if the house of which he is a member refuses to excuse his absence, he shall not be paid any per diem during his absence and is liable for the expenses incurred in procuring his attendance.

2-10. During a call of either house, all business of that house shall be suspended. After a call has been ordered no motion is in order except a motion to adjourn or remove the call. The call may be removed by a two-thirds vote.

2-11. If either house is in session upon a given day, whether or not the other house is in session, that day shall constitute a legislative day.

## CHAPTER 3

### Legislative Employees

3-1. The legislature shall prescribe the compensation of the officers and

employees of each house by joint resolution. Each house shall prescribe the duties of its officers and employees and no payment shall be made from the state treasury, or be in any way authorized to any such person, except to an acting officer or employee elected or appointed in pursuance of law.

3-2. Except as provided in Joint Rule 3-3 and Joint Rule 3-4, the business manager, subject to the supervision of the committee on legislative administration of each house and subject to the approval of the respective houses, shall be responsible for personnel.

3-3. The committee on legislative administration of each house shall appoint secretaries for standing or special committees on recommendation of the committee chairman, subject to the approval of the respective houses. A secretary for a standing or special committee is immediately responsible to the committee chairman, but when not occupied with the duties of a committee, shall work under the direction of the chief stenographer of each house. The director of the Legislative Services Division of the Legislative Council shall hire all engrossing and enrolling typists and proofreaders.

3-4. The presiding officer and the majority and minority floor leader of each house may each appoint a private secretary.

3-5. The secretary of the senate and chief clerk of the house of representatives are responsible to the presiding officers of their respective houses. Their duties are:

- (a) To have custody of all records, bills, documents and other papers.
- (b) To supervise the making and examination of the journal, and the handling of bills and resolutions.
- (c) To deliver to the appropriate officers or offices, as set forth in these rules during the session or at the close of each session, the journal, bill books and resolution books, and all copies of introduced and engrossed bills and joint resolutions.
- (d) To collect from the chairman or secretaries of all standing committees, special committees, committees of the whole, and conference committees, the minutes of such committees and deliver them to the state historical society.

3-6. Journal clerks, bill clerks, typists, and other employees responsible for legislative functions, except secretaries for standing or special committees, secretaries to presiding officers, and secretaries to majority and minority floor leaders, are immediately responsible to the secretary of the senate or the chief clerk of the house, subject to the general supervision of the presiding officer. Engrossing and enrolling clerks are immediately responsible to the director of the Legislative Services Division of the Legislative Council under the direction of the bills committee.

3-7. The duties of the engrossing and enrolling clerks are:

- (a) To engross or enroll all bills delivered to them within forty-eight hours after they have been received, unless further time is granted, in writing, by the presiding officer of the house in which the bill originated.

(b) To correct clerical errors, with the consent of the secretary of the senate or chief clerk of the house of representatives, in any bill originating in the house by which they are employed. Clerical errors such as the following may be corrected:

- (i) errors in spelling
- (ii) errors in numbering sections
- (iii) adding or deleting underlining or lines through matter to be stricken
- (iv) material copied incorrectly from the most recent Revised Codes of Montana.

The secretary of the senate or chief clerk of the house shall obtain written permission from the principal sponsor before such corrections are made.

When a committee is the sponsor of a bill, any member thereof so designated by the chairman may be the principal sponsor for the purpose of this section.

3-8. (1) The sergeants-at-arms are responsible to the presiding officers of their respective houses. Their duties are:

- (a) To maintain order under the direction of the presiding officer.
- (b) To execute commands and serve all processes.
- (c) To receive, distribute and have custody of supplies.

3-9. The assistant sergeant-at-arms, doorkeepers, watchmen, janitors, pages and other employees responsible for general housekeeping functions are immediately responsible to the sergeant-at-arms, subject to the general supervision of the presiding officer.

3-10. The duties of the chaplain of each house are to open each day's session with a prayer.

3-11. A legislative aide or legislative intern is a person who has registered with the business manager and to whom the business manager has issued a distinctive identification form such as a name tag. The business manager may issue such identification only upon receiving written verification from a member that the person involved is serving him as an aide or intern. A person may not represent himself to be a legislative aide or intern unless he carries such identification. The sergeants-at-arms and doorkeepers shall enforce this rule.

No member may designate more than one aide or intern without the approval of the Joint Rules Committee.

3-12. An employee, legislative aide or legislative intern of either house is prohibited from lobbying as defined in Section 43-802 (1), R.C.M. 1947. However, such person may testify before a committee of either house on the request of the committee. Any person violating this rule shall be discharged.

3-13. Disputes or complaints involving the competency or decorum of

a legislative employee shall be referred to the committee on legislative administration of the house by which the employee is employed. The committee, in its discretion, may dismiss, suspend or retain the employee. The committee on legislative administration shall periodically review the roster of employees and shall dismiss surplus employees.

° 3-14. A business manager shall be employed to serve both the senate and house of representatives and shall be under the supervision of the Joint Legislative Administration Committee.

The duties of the business manager are as follows:

1. Prior to a legislative session:
  - a. Order supplies for each House;
  - b. Requisition printing of:
    - (i) House & Senate stationery,
    - (ii) All necessary report forms,
    - (iii) Printout sheets for House and Senate voting machines, and
    - (iv) Name plates for desks;
  - c. Inventory all interoffice forms and duplicate a supply;
  - d. Clean all legislative committee rooms, office and House and Senate chambers and prepare them for the session;
  - e. Prepare recommendation to legislative administration committees of proposed budget based on past sessions and anticipated expenditures;
  - f. Requisition rental of office equipment including duplicating machines, adding machines and calculators;
  - g. Requisition parking permits;
  - h. Collect applications for employment of legislative employees who are under the jurisdiction of the legislative administration committees in both houses;
  - i. Supervise installation and connections of legislative telephone services;
  - j. Assure that House and Senate roll call and sound systems are serviced;
  - k. Order name tags for each legislator;
  - l. Prepare packets for 1st legislative day including printed rules, telephone directory and pencils;
  - m. Assign committee space and order necessary committee signs for doors;
  - n. Verify guide service with General Services Division;
  - o. Arrange for printing of seating charts;

p. Take responsibility and control of legislative equipment and furniture.

2. During the session:

a. Verify hours for daily payroll and prepare payrolls for signature;

b. Prepare bi-monthly financial report and distribute the report to legislative leaders in each house and to members of legislative administration committees;

c. Order office supplies as required;

d. Prepare all claims for payment.

3. Following the session:

a. Provide Legislative Council with keys to all legislative committee rooms during the interim;

b. Complete payroll forms and reports;

c. Prepare claims for bills incurred during session;

d. Take closing inventory of all furniture and equipment and keep the written inventory on file.

4. Perform any other services for the leadership and the committees on legislative administration.

#### CHAPTER 4 Order of Business

4-1. After prayer, roll call, and report on the journal, the order of business of the senate and house of representatives is as follows:

- (1) Communications and petitions
- (2) Reports of standing committees
- (3) Reports of select committees
- (4) Messages from the governor
- (5) Messages from the other house
- (6) Motions
- (7) First reading and commitment of bills
- (8) Second reading of bills (committee of the whole)
- (9) Third reading of bills
- (10) Unfinished business
- (11) Special orders of the day
- (12) Announcement of committee meetings

To revert to or pass to a new order of business requires only a majority vote. Unless otherwise specified in the motion to recess, the house



involved shall revert to order of business No. 1 when reconvening after a recess.

## CHAPTER 5

### Motions

5-1. When a motion is made it shall be restated by the presiding officer, and, if requested by the presiding officer or a member, shall be reduced to writing and read aloud. A motion may be withdrawn by the member making it at any time before it is amended or voted upon.

5-2. When a question is under debate no motion may be made except the following privileged and subsidiary motions which have precedence in the order listed:

- (1) To adjourn
- (2) For a call of the house
- (3) To recess
- (4) Question of privilege
- (5) To lay on the table
- (6) For the previous question
- (7) To postpone to a day certain
- (8) To refer or commit
- (9) To amend
- (10) To postpone indefinitely.

A question may be indefinitely postponed by a majority roll call vote of all members present and voting. When a bill or resolution is postponed indefinitely, it is finally rejected and may not be acted upon again during the biennium except upon a motion of reconsideration made pursuant to rule 5-4.

5-3. No motion or proposition on a subject different from that under consideration shall be admitted under color of amendment or substitute.

5-4. Any member may, on the day the vote was taken or on the next day the house in which the action was taken is in session, move to reconsider the question. A motion to reconsider may not be withdrawn after such next legislative day without the unanimous consent of the house concerned, and thereafter any member may call it up for consideration; however, a motion to reconsider made after the fifty-fourth day of the session shall be disposed of when made. A motion to recall a bill from the other house constitutes notice to reconsider, and shall be acted on as a motion to reconsider. A motion to reconsider or to recall a bill from the other house may be made only under order of business No. 6, and under that order of business takes precedence over all motions except motions to recess or adjourn.

5-5. When a motion to reconsider is laid on the table, a two-thirds majority is required to take it from the table. When a motion to reconsider fails, the question is finally and conclusively settled.

5-6. (1) Except as provided in subsection (2) of this rule, the effect of moving the previous question, if adopted, is to close debate immediately, to prevent the moving of amendments or other subsidiary motions, and to bring to vote promptly the immediately pending main question and the adhering subsidiary motions, whether on appeal or otherwise.

(2) When the previous question is ordered on any debatable question on which there has been no debate, the question may be debated for one-half hour, one half of such time to be given to the proponents and one half to the opponents.

5-7. A call of the house is not in order after the previous question is ordered, unless it appears upon an actual count by the presiding officer that a quorum is not present.

5-8. The following motions are not debatable:

- (1) To adjourn
- (2) For a call of the house
- (3) To recess
- (4) For parliamentary inquiry
- (5) For suspension of the rules
- (6) To lay on the table
- (7) For the previous question
- (8) To limit, extend the limits of, or to close debate
- (9) To amend an undebatable motion
- (10) To divide a question
- (11) To pass business in committee of the whole
- (12) To take from the table
- (13) A decision of the presiding officer, unless appealed or unless he submits the question to the house for advice or decision
- (14) All incidental motions, such as motions relating to voting or other questions of a general procedural nature.

5-9. A member may move to divide a question if it includes two or more propositions so distinct in substance that if one thing is taken away a substantive question will remain.

5-10. No more than one amendment and no more than one substitute motion may be made to a motion. This rule permits the main motion and two modifying motions.

## CHAPTER 6

### Bills and Resolutions

#### A.—Form of Bills—Definition of Resolutions—General Provisions

6-1. The only types of instruments other than bills which may be introduced in either house of the legislature are:

(1) A simple resolution, which is a formalized motion passed by one house only and which bears the heading "House Resolution" or "Senate Resolution." It may be used to amend the rules of one house or to express the desire, opinion, sympathy or request of the house adopting it. It does not require three readings or a roll call vote. A member offering a simple resolution may read it in his place before introduction. When a simple resolution has been introduced, it shall be referred to a committee. Final action shall be taken on the Committee of the Whole report. The transmittal of copies of simple resolutions is the responsibility of the chief clerk or secretary of the house of origin.

(2) A joint resolution must be adopted by both houses and need not be approved by the governor. It may be used to express desire, opinion, sympathy or request of the legislature, to amend the joint rules, and to ratify or propose amendments to the United States Constitution. A joint resolution shall also be used to propose amendments to the Constitution of Montana, which shall be considered as provided in Article XIV, Section 8 of the Montana Constitution. If a joint resolution goes beyond a mere recommendation or expression of opinion, or does not relate to a subject solely within the competence of the legislature, it is subject to veto by the governor. Except as otherwise provided in these rules or the Constitution of the State of Montana, a joint resolution is treated in all respects as a bill.

6-2. Bills shall be typewritten on paper eight and one-half by eleven inches with 25 numbered lines, and shall be introduced in quadruplicate. Pica type and a good black ribbon must be used. Bills shall be numbered at the foot of each page and shall have white covers of a substantial material. In sections amending existing statutes, matter to be stricken out shall be indicated with a line through the words or part to be deleted, and new matter shall be underlined. A key showing the numbers of sections of the most recent Revised Codes of Montana repealed or amended in a bill shall immediately precede the title. Introduced bills will be introduced on white paper and distributed to legislators.

6-3. No bill, except general appropriation bills, and bills for the codification and general revision of the laws, shall contain more than one subject, which shall be clearly expressed in the title. The enacting clause of every law shall be as follows: "Be it enacted by the legislature of the state of Montana."

6-4. The general appropriation bills shall embrace nothing but appropriations for the ordinary expenses of the legislative, executive and judicial departments of the state, interest on public debt and for public schools. All other appropriations shall be made by separate bills, each embracing but one subject. (Montana Constitution, Art. V, Sec. 11 (4))

6-5. Every statute, unless a different time is prescribed therein, takes effect on the first day of July of the year of its passage and approval. Every joint resolution, unless a different time is prescribed therein, takes effect from its passage. (Sections 43-507 and 43-509, R.C.M. 1947)

**B.—Introduction**

6-6. Bills will be checked by the staff of the Legislative Services Division of the Legislative Council prior to consideration by a committee of the legislature, for proper format, style, and legal form. A stamp will be affixed to the bill cover and initialed indicating this review. If such stamp is not affixed at the time the bill is delivered to the appropriate committee chairman, the chairman shall cause the bill to be transmitted to the Legislative Services Division for such review. Members should make every effort to present proposed bills to the Division in advance of introduction of the bill. Bills will be entered on the automated bill drafting equipment and typed to facilitate a more rapid reproduction. If a bill is not so entered prior to introduction, it will not be considered by any committee until it has been so entered.

A bill may be introduced by endorsing it with the name of a member or committee and presenting it to the chief clerk or secretary in quadruplicate. Bills, joint resolutions, and simple resolutions shall be numbered consecutively in each biennium in separate series in the order of their receipt.

Bills may be pre-filed, numbered and pre-printed prior to a legislative session. This will be the responsibility of the staff of the Legislative Services Division of the Legislative Council. Actual signatures may appear on the face of the pre-filed bill or signatures may be obtained on a consent form from the Legislative Services Division. Additional sponsors may be added at the time of introduction on the first legislative day, on motion of the chief sponsor. These names will be forwarded to the Legislative Services Division to be included on the face of the bill following standing committee approval.

6-7. During the first session of any legislature bills may be introduced at any time before final adjournment of the session. No bill, however, introduced after 5 p.m. on the eighteenth legislative day of the first session, except revenue bills, appropriation bills and substitute bills will be considered, save in committee, during that session by the house in which it was introduced, without the consent of that house, or, if so considered and transmitted to the other house, by that house without the consent thereof.

All bill drafting requests must be submitted to the Legislative Council staff by 5 p.m. of the fourteenth legislative day of the first session. Any request received after that time will not be prepared for introduction before 5 p.m. on the eighteenth day. To be considered during the first session revenue bills must be introduced by 5 p.m. on the twenty-fifth legislative day. Bills not considered and acted upon during the first session shall carry over with the same status to any other session of the legislature during the biennium, and shall be then considered and acted upon. During any session of the biennium other than the first session, all bills except revenue bills, appropriation bills and substitute bills must be introduced by 5 p.m. of the tenth legislative day; and all bill drafting requests must be submitted to the Legislative Council staff by 5 p.m. on the sixth legislative day. Any request received after that time will not

be prepared for introduction before 5 p.m. on the tenth legislative day. Revenue bills at such sessions following the first session of the biennium must be introduced by 5 p.m. of the fifteenth legislative day.

Joint Resolutions affecting rules adopted in the Montana Administrative Code may be introduced and transmitted at any time during a session;

6-8. During either regular session, no bill may be introduced or received in a house after that house has finally rejected a bill during that biennium designed to accomplish the same purpose save upon approval by the rules committee of the house in which the bill is offered for introduction or reception, nor may any such bill be introduced or received in a house at any special session, unless an emergency exists which in the opinion of the governor or of the members requesting a special session requires the introduction or reception of such bill, and the existence of the emergency and such opinion is set forth in the governor's call or the members' request for a special session.

Failure to override a veto does not constitute final rejection.

6-9. A committee must unanimously consent to the introduction of a committee bill.

#### C.—First Reading and Commitment

6-10. No motion affecting a bill is in order on its first reading except as provided in Joint Rule 6-6.

Upon introduction or reception of a bill, the chief clerk of the house or the secretary of the senate shall publicly post upon a listing that bill by a summary of its title in the house of origin and by a summary of its title and by its history in the second house, together with a notation of the committee to which it has been assigned, and such posting shall constitute the first reading of the bill.

6-11. No bill shall be considered or become a law unless referred to a committee and returned therefrom.

6-12. Upon introduction or reception of a bill, it shall be referred to a committee by the presiding officer.

6-13. A bill may be recommitted at any time before its passage.

#### D.—Amendments and Substitute Bills

6-14. No law shall be revised or amended, or the provisions thereof extended by reference to its title only, but so much thereof as is revised, amended or extended shall be re-enacted and published at length.

6-15. No law shall be passed except by bill, and no bill shall be so altered or amended on its passage through either house as to change its original purpose. (Montana Constitution Art. V., Sec. 11(1))

6-16. A committee may recommend that every clause in a bill be changed and that entirely new matter be substituted so long as the new matter is relevant to the title and subject of the original bill. A substitute bill shall be considered as an amendment and not as a new bill.

6-17. The proper form of reporting a substitute bill by a committee is to propose amendments to strike out all of the bill following the enacting clause and to substitute the new bill, recommending also any necessary changes in the title. If a committee report recommending a substitute for a bill originating in the other house is adopted, the substitute bill shall be printed.

6-18. Amendments to a bill by the second house shall not be further amended by the house in which the bill originated, but must either be accepted or rejected. If the amendments are rejected, a conference committee may be requested by the house in which the bill originated.

6-19. If a majority of a house recommends the passage of a bill originating in that house after it has been returned from a committee, not less than six hundred copies of the bill shall be printed on canary paper with all amendments incorporated into the printed copies. Bills referred to the bills committee of the house of origin for printing must be reported within three days unless further time is granted by that house.

#### E.—Engrossing and Enrolling

6-20. When a bill has been reported favorably by committee of the whole of the house of origin and the report has been adopted, the bill shall be engrossed under the direction of the bills committee, and when reported correctly engrossed by the committee shall be placed on the calendar for third reading on the succeeding legislative day. Committee of the whole amendments shall be included in the engrossed bill. Copies of the engrossed bill to be distributed to legislators will be reproduced on blue paper. If a bill is unamended, contains no clerical errors, and is neatly written, it may be engrossed without retyping.

6-21. When a bill has passed both houses it shall be enrolled by the Legislative Services Division of the Legislative Council as an act of the legislature under the direction of the bills committee of the house of origin. An original and three duplicate typewritten copies of the bill shall be enrolled, free from all corrections and errors, with a margin of two inches at the top and one inch on each side, with twenty-five unnumbered lines to the page. In sections amending existing statutes new matter shall be underlined, and matter stricken with a line through it shall be omitted. The typewriting shall be done with a black record ribbon, pica type, on paper 8-½ inches wide and 11 inches long. The original and two copies only of the bill shall be red lined. The history of the bill shall also be enrolled and placed in back of the bill in a white manuscript cover, upon which is written the number of the bill and the title.

When the enrolling has been completed, the bill shall be examined by the author and the bills committee and reported correctly enrolled.

The correctly enrolled bill shall be delivered to the presiding officer of the house in which the bill originated. The presiding officer shall announce from the rostrum, the announcement to be entered in the journal, the specific bills to be signed by him and shall designate a time when such bill shall be signed, and he shall sign the original and two copies of each bill delivered to him not later than the next legislative day after it has been reported correctly enrolled, unless the bill is delivered on the

last legislative day in which event it shall be signed that day. The fact of signing shall be entered upon the journal no later than the next legislative day. At any time after the report of a bill correctly enrolled and before the signing, if a member signifies his desire to examine the bill, he shall be permitted to do so. The bill shall then be transmitted to the other house where the same procedure shall be followed.

The original and two copies signed by the presiding officer of each house shall be presented by the bills committee to the governor. The bills committee shall take a receipt from the governor and shall report to the house the day and hour of such presentation, which shall be entered in the journal. The original and the unsigned copy shall be filed with the secretary of state. Signed copies with chapter numbers assigned pursuant to Section 82-2209, shall be filed with the clerk of the supreme court and the Legislative Services Division of the Legislative Council.

**F.—Second Reading—Committee of the Whole**

6-22. All bills which have been reported by a committee, accepted by the house concerned and printed, shall be posted on the calendar for consideration by committee of the whole. The sergeants-at-arms of the respective houses shall record the time each bill is received and the time the bill is placed on members' desks. Until the forty-eighth legislative day, one day must elapse between the time a committee approved bill is placed on the members' desks and consideration by committee of the whole. Bills shall be arranged on the calendar in numerical order unless they are companion bills or are otherwise ordered by the house or committee of the whole of the house concerned.

6-23. Every bill considered in committee of the whole shall be read by a summary of its title and by its history and considered section by section.

6-24. Prior to adoption of a committee of the whole report, a member may move to segregate a bill. If the motion prevails, the bill remains on second reading.

6-25. When a committee of the whole report on a bill is rejected the bill shall remain on second reading.

6-26. Either house may resolve itself into a committee of the whole by approval of a motion for that purpose. So far as may be applicable, the rules governing each house shall be observed when that house resolves itself into a committee of the whole, except as follows:

(1) The only motions in order are: to amend; to recommend passage or nonpassage; to recommend concurrence or nonconcurrence; to indefinitely postpone; to pass consideration; to rise; to rise and report; and to rise and report progress and ask leave to sit again.

(2) The committee may not appoint subcommittees.

(3) The committee may not punish its members for misconduct, but may report disorder to the house concerned.

(4) Unless otherwise prescribed by either house before going into committee of the whole, a member may speak as often as he is recognized and for as long each time as is allowed in debate in the particular house.

6-27. After a committee of the whole has been formed, the presiding officer shall appoint a chairman to preside. Upon resuming the chair, the presiding officer shall receive the report of the chairman of the committee and the house shall take action on the report.

**G.—Third Reading—Governor's Veto**

6-28. No bill shall become a law except by vote of a majority of all the members present in each house, nor unless on its final passage the vote be taken by ayes and noes, and the names of those voting be entered on the journal. (Montana Constitution, Art. V, Sec. 11(1) and (2))

6-29. Every bill shall be read three times prior to passage, either by title or by summary of title as provided in these rules. The first reading shall be as prescribed in Joint Rule 6-10; the second prior to debate in committee of the whole; and the third, which shall be by complete title, prior to final passage. No bill shall receive more than one reading on the same day except on the last legislative day. No amendment may be offered on the third reading.

6-30. (1) Each bill passed by the legislature, except bills proposing amendments to the Montana Constitution, bills ratifying proposed amendments to the United States Constitution, resolutions, and referendum measures of the legislature, shall be submitted to the governor for his signature. If he does not sign or veto the bill within five days after its delivery to him if the legislature is in session or within 25 days if the legislature is adjourned, it shall become a law. The governor shall return a vetoed bill to the legislature with a statement of his reasons therefor.

(2) The governor may return any bill to the legislature with his recommendation for amendment. If the legislature passes the bill in accordance with the governor's recommendation, it shall again return the bill to the governor for his reconsideration. The governor shall not return a bill for amendment a second time.

(3) If after receipt of a veto message, two-thirds of the members present approve the bill, it shall become law.

(4) If the legislature is not in session when the governor vetoes a bill, he shall return the bill with his reasons therefor to the legislature as provided by law. The legislature may reconvene to reconsider any bill so vetoed.

(5) The governor may veto items in appropriation bills, and in such instances the procedure shall be the same as upon veto of an entire bill. (Montana Constitution, Art. VI, Sec. 10)

6-31. Upon receipt of a veto message the presiding officer shall read the message. After the reading a member may move that the governor's veto shall be overridden. A vote on the motion shall be determined by roll call. If two-thirds of the members present vote "aye" the veto is overridden. If two-thirds of the members present do not vote "aye" the veto is sustained.



6-32. If the governor returns a bill to the originating house with his recommendations for amendment, such house shall reconsider the bill under its rules relating to amendment offered in committee of the whole. The bill is then subject to the following procedures:

(a) The originating house shall transmit to the second house, for consideration under its rules relating to amendments in committee of the whole, the bill and the originating house's approval or disapproval of the governor's recommendations.

(b) If both houses approve the governor's recommendations the bill shall be returned to the governor for his reconsideration.

(c) If both houses disapprove the governor's recommendations the bill shall be returned to the governor for his reconsideration.

(d) If one house disapproves the governor's recommendations and the other house approves, then either house may request a conference committee which may be a free conference committee.

(i) If both houses adopt a conference committee report, the bill in accordance with the report shall be returned to the governor for his reconsideration.

(ii) If a conference committee fails to reach agreement or if its report is not adopted by both houses the governor's recommendations shall be considered not approved and the bill shall be returned to the governor for further consideration.

#### H.—Transmittal of Bills

6-33. Each house shall transmit to the other with any bill all relevant papers. When a house bill is transmitted from the house of representatives to the senate, the secretary of the senate shall give a dated receipt for the bill to the chief clerk of the house. When a senate bill is transmitted to the house of representatives, the chief clerk of the house shall give a dated receipt to the secretary of the senate.

6-34. During the first session of any legislature no bills, except for appropriation bills, revenue bills and amendments considered by joint committee need to be acted upon (save for reference to a committee by the presiding officer) if transmitted from one house to the other after the fortieth legislative day, but shall be held pending in the house to which it is transmitted unless two-thirds of the members present and voting shall determine that the bill shall be acted upon, and, if so held, it shall be acted upon at a subsequent session during the biennium. Amendments, except to appropriation bills and revenue bills, shall likewise be deferred for consideration if transmitted during the first session and after the fifty-third legislative day thereof. At the second regular session of any legislature no bills, other than appropriation bills, revenue bills and amendments considered by joint committee, may be received by the second house after the fortieth legislative day, unless received by two-thirds of the members present and voting; and no amendments, except to appropriation bills and revenue bills may be received by the second house after the fifty-third legislative day, unless received by two-thirds of the members present and voting.

6-35. When a bill has received its third reading or has been rejected, the house that considered the bill shall immediately transmit it to the other house with notice of its action.

6-36. All bills reported out of a committee of the legislature having an effect on the revenues, expenditures, or fiscal liability of the state, except appropriation measures carrying specific dollar amounts, shall include a fiscal note incorporating an estimate of such effect. The Legislative Council staff shall indicate at the top of each bill prepared for introduction that a fiscal note may be necessary under this rule. Fiscal notes shall be requested by the presiding officer of either house, who shall determine the need for the note at the time of introduction, based on the Legislative Council staff recommendation.

The state budget director, in cooperation with the agency or agencies affected by the bill, is responsible for the preparation of the fiscal note and shall return the same within six (6) days, unless further time is granted by the presiding officer or committee making the request based upon a written statement from the budget director that additional time is necessary to properly prepare the note.

A completed fiscal note shall be submitted by the budget director to the presiding officer who requested it, who shall refer it to the committee considering the bill. All fiscal notes shall be printed and placed on the members' desks.

Fiscal notes shall, where possible, show in dollar amounts the estimated increase or decrease in revenues or expenditures, costs which may be absorbed without additional funds, and long-range financial implications. No comment or opinion relative to merits of the bill shall be included; however, technical or mechanical defects may be noted.

A fiscal note also may be requested on a bill and on an amendment by

- (1) A committee considering the bill, or
- (2) A majority of the members of the house in which the bill is to be considered, at the time of second reading, or
- (3) The chief sponsor through the presiding officer.

The budget director shall make available on request to any member of the legislature all background information used in developing a fiscal note. (Sections 43-1001 through 43-1006, R.C.M. 1947)

## CHAPTER 7

### Committees

7-1. (1) The committee on legislative administration of each house shall consider all matters concerned with seating, mileage and per diem, legislative employees, the control of the legislative property, and the budgeting for and expenditure of appropriations for the operation of the legislature, in cooperation with the business manager.

- (2) All expenditures of money appropriated for the operation of the

legislature must be approved by the committee on legislative administration of the house concerned.

7-2. A standing committee shall submit a written report in triplicate on all bills or matters referred to it within 7 days after reference, unless at the request of the committee and for good cause shown, further time is granted by the house concerned.

7-3. If the members of a committee cannot agree on a report, the majority and minority of the committee present at a committee meeting may submit separate reports. Only one minority report may be submitted. Such reports shall be entered at length on the journal, unless otherwise ordered by the house concerned.

7-4. All committees shall keep minutes of their meetings and, at the close of the session, shall make five complete copies and shall turn the original of the minutes over to the chief clerk of the house or secretary of the senate for delivery to the historical society. The majority and minority leader of each house and the Legislative Council shall each be given one copy of the minutes.

7-5. The committee on bills and journal, the rules committee, and conference committees may report at any time, except during a call of the house or when a vote is being taken. Reports from the bills and journal committee shall stand approved without formal action.

7-6. All bills providing for an appropriation of public moneys may first be considered by a joint committee composed of the members of the finance and claims committee of the senate and the house, and then by each separately. Meetings of the joint committee shall be held upon call of the chairman of the house finance and claims committee who shall be chairman of the joint committee.

7-7. The chairman of each committee has general control and direction of the hall and committee room of the committee over which he presides, subject to the control of the presiding officer under rule 1-3. Except as provided in Joint Rule 7-6, the chairman of the senate committee shall be chairman of all joint committees.

7-8. If either house requests a conference and appoints a committee for the purpose of discussing an amendment on which the senate and the house of representatives cannot agree, the other house shall appoint a committee consisting of the same number of members. They shall meet at a convenient time, to be agreed upon by their chairman, and having conferred, shall report to their respective houses the result of their conference. A conference committee shall confine itself to the disputed amendment.

If either house requests a free conference committee and the other house concurs, appointments will be made the same as above. A free conference committee may discuss a bill in its entirety and is not confined to a particular amendment.

7-9. In joint committees other than conference committees, members vote individually and not by houses. Because conference committees are joint meetings of separate committees, in conference committees the

committees from each house vote separately, and a majority of each committee must agree before any action may be taken.

7-10. When a conference committee report is filed with the secretary or clerk the same shall be read under order of business no. 3, select committees, and placed on the calendar for consideration on second reading. If recommended favorably by the committee of the whole, it may be considered on third reading the same legislative day. On the final legislative day a conference committee report shall be placed on the calendar for immediate consideration on second reading and shall be further considered on third reading the same legislative day.

## CHAPTER 8

### Rules and Journal

8-1. Each house shall keep a journal of its proceedings, and may, in its discretion, from time to time, publish the same, and the ayes and noes on any question shall, at the request of any two members, be entered on the journal.

8-2. The proceedings of each house which shall be entered on its journal include:

(1) The title and number of each bill when it is introduced; subsequent references may be by number only.

(2) Every motion and the name of the member making it.

(3) Proposed constitutional amendments which have been voted for by two-thirds of the members. (Montana Constitution, Art. XIX, Sec. 9)

(4) Committee reports.

(5) Roll call votes.

(6) Messages from the governor and the other house.

(7) An entry of the oath taken by the members. (Sec. 43-209, R.C.M. 1947)

8-3. The bills and journal committee of each house shall supply the director of the Legislative Services Division of the Legislative Council with the contents of the daily journal to be programmed on automated equipment, examine its journal, distribute a daily journal to all legislators, correct any errors, and report each legislative day immediately after roll call.

8-4. The journal of the senate must be authenticated by the signature of the president, and the journal of the house of representatives by the signature of the speaker. The distribution of the completed journals shall be made by the Legislative Services Division of the Legislative Council. (Sec. 43-304, R.C.M. 1947)

8-5. (1) A joint rule may be repealed or amended only with the concurrence of both houses, under the procedures adopted by each house for the repeal or amendment of its own rules.

(2) A joint rule governing the procedure for handling bills may be

temporarily suspended by the consent of two-thirds of the members of either house, insofar as it applies to the house suspending it.

(3) Any rules committee report recommending a change in joint rules shall be referred to the other house for concurrent action. Any new rule or any change in the rules of either house shall be transmitted to the other house for informational purposes.

8-6. Mason's Manual of Legislative Procedure governs the proceedings of the senate and house of representatives in all cases not covered by these rules.

8-7. The Legislative Council shall codify and publish in one volume the rules of the senate, the rules of the house of representatives and the joint rules of the senate and house of representatives. Upon adoption, the secretary of the senate and the chief clerk of the house of representatives shall provide the office of the Legislative Council with one copy of all motions or resolutions amending senate, house or joint rules, and with copies of all minutes and reports of the rules committees. After the rules have been published, the Legislative Council shall distribute copies as directed by the senate and house of representatives.

## CHAPTER 9

### Voting Procedure

9-1. Except as provided in Joint Rule 9-2, every member present when a question is put shall vote unless the house of which he is a member excuses him.

9-2. A member who has a personal or private interest in any measure or bill proposed or pending before the legislature shall disclose the fact to the house of which he is a member, and shall not vote thereon.

9-3. Amendments to the constitution may be proposed by any member of the legislature. If adopted by an affirmative roll call vote of two-thirds of all the members of the legislature, the amendment shall be deemed approved by the legislature. (Montana Constitution, Art. XIV, Sec. 8)

9-4. When a measure requiring the concurrence of two-thirds of the members is under consideration, a majority vote is sufficient to decide any question relating to the measure short of third reading.

9-5. A roll call vote shall be taken on the request of two members.

9-6. On a roll call vote the names of the members shall be called alphabetically, unless an electrical voting system is used. A member may not vote or change his vote after the decision is announced from the chair. A member may not explain his vote until after the decision is announced from the chair.

9-7. (1) On third reading the question shall be stated as follows: "Senate (or house) bill number \_\_\_\_\_ having been read three several times, the question is, shall the bill pass (or be concurred in)."

(2) If an electrical voting system is used the presiding officer shall ring the bell after stating the question and then state "Those in favor vote yea and those opposed vote no." After a reasonable pause the presiding

officer asks "Has every member voted?" (reasonable pause) "Does any member wish to change his or her vote?" (reasonable pause) "The clerk (secretary) will now record the vote."

9-8. Two members may pair on a measure that will be determined by a majority vote. On a measure requiring a two-thirds vote for adoption three members may pair, with two members for the measure and one member against. Pairing is permitted only when one of the paired members is absent when the vote is taken.

9-9. An agreement to pair must be in writing and dated and signed by the members agreeing to be bound, and must specify the duration of the pair. When an agreement to pair is filed with the secretary of the senate or chief clerk of the house of representatives, it shall bind the members signing until the expiration of time for which it was signed, unless the paired members sooner appear and ask that the agreement be cancelled.

9-10. Every vote of each member of the legislature on each substantive question in the legislature, in any committee, or in committee of the whole shall be recorded and made public. On final passage of any bill or joint resolution the vote shall be taken by ayes and noes and the names entered on the journal. A roll call vote shall be taken on non-substantive questions on the request of two members, who may likewise on any vote, request that the ayes and noes be spread upon the journal. Roll call votes and other votes which are to be made public but are not specifically required to be spread upon the journal shall be entered in the minutes of the appropriate committee or of the appropriate house and a copy of such minutes shall be filed with the Montana state historical society. (Montana Constitution, Art. V, Sec. 11(2))

## CHAPTER 10

### Effective Date of Joint Rules

10-1. These rules are effective upon passage by both houses.

Approved January 15, 1974

## SENATE JOINT RESOLUTION NO. 42

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE SECRETARY OF THE INTERIOR TO FIND AND RECOMMEND THAT THE PROPOSED ALLENSPUR DAM ON THE YELLOWSTONE RIVER SHOULD NOT BE AUTHORIZED OR CONSTRUCTED.

WHEREAS, the lands and waters of the Yellowstone River Valley in Park County are, as presently managed, meeting the natural resource needs of the residents of the valley, and

WHEREAS, there are no programs administered within the federal

Department of the Interior needed for the Yellowstone River in Park County other than such programs as are now instituted there, and

WHEREAS, the construction of the proposed Allenspur Dam on the Yellowstone River near Livingston would be particularly detrimental to the recreational, economic, and environmental needs of the residents of the Yellowstone Valley.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the secretary of the interior is urged and requested to find that the authorization by congress of the Allenspur Dam would not be in accord with the public interest or with national policy on investment in water resources or with the wishes of the people of Montana, and that the secretary not recommend to the congress that the Allenspur Dam should be authorized.

Approved March 11, 1974

### **SENATE JOINT RESOLUTION NO. 43**

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE CONGRESS TO INCREASE APPROPRIATIONS FOR RANGE LAND IMPROVEMENT ON THE PUBLIC LANDS.

WHEREAS, the federally-owned land in the western states is one of our greatest natural resources that can be developed and improved for multiple use purposes, and

WHEREAS, the production of food, fibre, recreation resources and timber products are in great demand today and of national importance in the future, and

WHEREAS, the economic base of most rural communities with range acres of federal land depend heavily on income derived from these land resources, and

WHEREAS, research has conclusively proven that these range lands can be economically developed to greatly increase carrying capacity, in some cases up to seventy-five per cent (75%) more wild life and domestic livestock than they are now carrying, and

WHEREAS, the pollution effect of soil erosion in streams and lakes and the loss of valuable top soil and water sheds can be arrested considerably through proper revegetation of millions of acres of federally-owned range land, and

WHEREAS, increased water development and fencing will provide better distribution and control of livestock and will make possible better utilization of grass and shrubs now unused on many federal range lands, and

WHEREAS, the money being allocated by the federal government for improvement, development and for the proper administration of these western ranges is far short of accomplishing these goals.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That Congress review the range land management of the U.S. Forest Service and the Bureau of Land Management, and increase appropriations of money for developing and improving our western ranges, including the control of noxious weeds; that the funds be made available to existing federal agencies for the improving of these vast ranges; and that these funds be used for range improvement.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this joint resolution to the Montana Congressional delegation.

Approved February 19, 1974

### SENATE JOINT RESOLUTION NO. 44

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA SUPPORTING THE CONCEPT OF FEDERAL LEGISLATION FOR IMPROVED REFORESTATION AND BALANCED MANAGEMENT PRACTICES ON FOREST LANDS.

WHEREAS, demands upon the nation's forest resource base have spiraled upward and shortages of goods and services from the forest now threaten the public health and welfare; and

WHEREAS, the two greatest opportunities to increase timber supplies to meet the nation's growing necessities lie in:

(1) improving the level and intensity of sustained yield management on federal lands, particularly the national forest, where inadequate reforestation has gone from bad to worse; and

(2) motivating over four million small non-industrial private woodland owners, who represent over three hundred million acres of some of the nation's finest forest producing land. A significant portion of this land lies idle or only partly productive.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Congress should appropriate sufficient funds to the Secretary of Agriculture to immediately step up reforestation of national forest lands, within the context of a balanced management program for the national forests.

BE IT FURTHER RESOLVED, that, in order to initiate a meaningful program to bring about reforestation of forest lands, Congress should significantly increase the appropriation under PL 93-86, the Agriculture and



Consumer Act of 1973, above the 10 million dollars currently earmarked for a forestry incentive program on non-federal lands, and that the Secretary of Agriculture immediately increase the 5% allocation of this amount to the Western States to a level more commensurate with the value of our timber resources and need.

BE IT FURTHER RESOLVED, that copies of this joint resolution be sent to the Honorable Mike Mansfield and the Honorable Lee Metcalf, United States Senators; the Honorable John Melcher and the Honorable Richard Shoup, United States Representatives; to the Secretary of the United States Department of Agriculture; and to the Chief Forester in the United States Department of Agriculture soliciting their support.

Approved March 8, 1974

## SENATE JOINT RESOLUTION NO. 46

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA PRESCRIBING THE DUTIES AND COMPENSATION OF LEGISLATIVE OFFICERS AND EMPLOYEES.

WHEREAS, it is necessary to establish the salaries and positions of legislative officers and employees for the continued session of the Forty-third (43rd) Legislature.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the following positions are paid for the number of days as authorized by the legislative administration committee of each house, at the indicated compensation per day, which may be computed on an hourly basis for accounting purposes:

|                                            |          |
|--------------------------------------------|----------|
| secretary of the senate.....               | \$37/day |
| (includes \$15 per diem for expenses)      |          |
| chief clerk of the house.....              | \$37/day |
| (includes \$15 per diem for expenses); and |          |
| sergeant-at-arms.....                      | \$36/day |
| (includes \$15 per diem for expenses)      |          |
| chaplain .....                             | \$11/day |

(2) The following positions are compensated for the number of hours for the calendar week as authorized by the legislative administration committee of each house at the indicated hourly wages. Each employee shall receive a five percent (5%) increase for each year of legislative experience not to exceed two (2) years.

| Position                                                                     | Wage per hour |
|------------------------------------------------------------------------------|---------------|
| (a) Offices of the secretary of the senate and the chief clerk of the house: |               |
| assistant secretary of senate and                                            |               |
| assistant chief clerk .....                                                  | 4.10          |
| chief stenographer.....                                                      | 3.85          |
| bills clerk .....                                                            | 3.80          |
| bills coordinator.....                                                       | 3.80          |
| journal clerk .....                                                          | 3.80          |
| bills distributor.....                                                       | 3.90          |
| secretary to secretary of senate                                             |               |
| or chief clerk.....                                                          | 3.80          |
| assistant chief stenographer.....                                            | 3.35          |
| assistant bills coordinator.....                                             | 3.35          |
| assistant journal clerk .....                                                | 3.35          |
| assistant bills clerk .....                                                  | 3.35          |
| secretary to assistant secretary                                             |               |
| of senate or assistant chief                                                 |               |
| clerk .....                                                                  | 3.80          |
| assistant bills distributor.....                                             | 3.00          |
| stenographer.....                                                            | 2.95          |
| reading clerk.....                                                           | 2.95          |
| posting clerk .....                                                          | 2.95          |
| clerk-typist.....                                                            | 2.80          |
| proofreader .....                                                            | 2.60          |
| typist .....                                                                 | 2.80          |
| (b) Offices of the sergeants-at-arms:                                        |               |
| assistant sergeant-at-arms .....                                             | 4.10          |
| supply clerk .....                                                           | 2.95          |
| parking attendant .....                                                      | 2.50          |
| watchman .....                                                               | 2.50          |
| page.....                                                                    | 1.70          |

- (c) Office of public information, fixed salaries:
- |                                     |      |
|-------------------------------------|------|
| public information supervisor ..... | 4.25 |
| public information officer .....    | 3.75 |
| head guide .....                    | 3.25 |
| guide .....                         | 3.00 |
- (d) Office of the business manager:
- |                                  |      |
|----------------------------------|------|
| business manager .....           | 4.10 |
| assistant business manager ..... | 3.70 |
| clerk-typist .....               | 2.80 |
- (e) Miscellaneous positions
- |                                                     |      |
|-----------------------------------------------------|------|
| committee researcher .....                          | 4.25 |
| secretary to an officer<br>of the legislature ..... | 3.80 |
| committee secretary .....                           | 3.80 |

(3) The duties of the secretary of the senate, the chief clerk of the house, and the sergeants-at-arms, are as prescribed by law, by legislative rule, and by the presiding officer of each house. The duties of committee researchers and secretaries are as prescribed by the chairman of the employing committees. The duties of the business manager and public information office are as prescribed by the joint committee on legislative administration. The duties of every other position scheduled in the preceding section are as prescribed by the committee employing the person in such position; and

(4) The salaries specified in this resolution shall be paid for every day of the Forty-third Legislature during which the employee works. The presiding officer of each house may authorize the legislative administration committee, when necessary, to continue the employment and compensation of officers and employees for a period not to exceed fifteen (15) days immediately after the adjournment of a session of the legislature and in addition for not more than ten (10) days prior to the session, except for the position of business manager.

Approved January 18, 1974

## SENATE JOINT RESOLUTION NO. 50

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REPEALING RULE 40-3.78(6)-S78080 OF THE MONTANA ADMINISTRATIVE CODE, CONCERNING MONETARY PENALTY FOR LATE RENEWAL OF CERTIFIED PHARMACY LICENSE.

WHEREAS, the Montana pharmacy law does not authorize the board of pharmacists to impose monetary fees or penalties of any nature, and

WHEREAS, the Montana board of pharmacists has, nevertheless, sought to impose a monetary penalty of twenty dollars (\$20) for any default in the payment of the renewal of a certified pharmacy license for a period of thirty (30) days after the date the same is due by the adoption of rule 40-3.78(6)-S78080.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the rule in section 40-3.78(6)-S78080 of the Montana Administrative Code is, under section 82-4203.1, repealed for the reasons set forth.

Approved February 12, 1974

## SENATE JOINT RESOLUTION NO. 52

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION AND THE RESOURCE CONSERVATION ADVISORY COUNCIL TO RECOMMEND TO THE 1975 LEGISLATIVE SESSION PROPOSED LEGISLATION AND IMPLEMENTING RULES AND STANDARDS ESTABLISHING A STATEWIDE PROGRAM FOR THE CONTROL OF SOIL EROSION AND SEDIMENT DAMAGE.

WHEREAS, erosion continues to be a serious problem through the state, and

WHEREAS, shifts in land use from agricultural and rural to nonagricultural and urbanizing uses, changes in farm and ranch enterprises, operations, and ownership, construction of housing, industrial and commercial developments, streets, highways, recreation areas, schools and universities, public utilities and facilities, and other land use activities have accelerated the process of soil erosion and sediment deposition resulting in pollution of the waters of the state and damage to domestic, agricultural, industrial, recreational, fish and wildlife, and other resource uses, and

WHEREAS, Senate Bill 401 was introduced in the 1973 Legislative Session to establish a statewide program for sediment control to be administered by the conservation districts, and

WHEREAS, further study of sediment control legislation should be made before such legislation is considered by the legislature, including holding public hearings thereon, and

WHEREAS, the Resource Conservation Advisory Council in the Department of Natural Resources and Conservation consists of representatives of the various farming, ranching, and urban interests, and has an intimate knowledge of the sediment control problem.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Department of Natural Resources and Conservation and the

Resource Conservation Advisory Council in cooperation with the Montana Association of Conservation Districts, the Department of Health and Environmental Sciences, and other interested parties make a thorough study of the sediment control problem, and existing legislation, and recommend to the 1975 Legislative Session appropriate legislation, including proposed rules and standards implementing such legislation, establishing a statewide program for the control of soil erosion and sediment damage.

Approved March 7, 1974

### **SENATE JOINT RESOLUTION NO. 53**

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE COMMITTEE ON PRIORITIES TO CONSIDER REQUESTING A JOINT STANDING SUB-COMMITTEE BE ASSIGNED THE STUDY OF THE PROFESSION OF "PHYSICIANS' ASSISTANTS" AND DRAFT PROPOSED IMPLEMENTING LEGISLATION FOR THE FIRST SESSION OF THE FORTY-FOURTH LEGISLATURE CONVENING IN 1975.

WHEREAS, the profession of "physicians' assistants" is one that could be desperately needed in our large and sparsely populated state, and

WHEREAS, many of the states surrounding Montana have legislation authorizing this profession, namely: Idaho, Oregon, Utah, Washington, and Wyoming, and

WHEREAS, the legislation committee of the Montana Medical Association already has this under study.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That, the Committee on Priorities, under section 43-717(3), R.C.M. 1947, consider and request that a joint standing committee be assigned the study of the profession of "physicians' assistants" and to conduct public hearings after notice upon all matters under consideration and draft proposed implementing legislation to the first session of the Forty-fourth Legislature when it convenes in 1975.

BE IT FURTHER RESOLVED, that copies of this joint resolution be transmitted by the Secretary of State to the Committee on Priorities and the Executive Director of the Legislative Council.

Approved March 15, 1974

### **SENATE JOINT RESOLUTION NO. 54**

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF

REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE OFFICE OF THE GOVERNOR IN CONJUNCTION WITH THE HIGHWAY TRAFFIC SAFETY DIVISION OF THE DEPARTMENT OF INTERGOVERNMENTAL RELATIONS TO COORDINATE THE DEVELOPMENT OF A COMPREHENSIVE MOTOR VEHICLE INFORMATION SYSTEM (MVIS) AND FURTHER REQUESTING THE MOTOR FUEL TAX DIVISION, DEPARTMENT OF REVENUE; GROSS VEHICLE WEIGHT DIVISION, DEPARTMENT OF HIGHWAYS; REGISTRAR'S BUREAU, DEPARTMENT OF JUSTICE; HIGHWAY PATROL BUREAU, DEPARTMENT OF JUSTICE; AND THE DEPARTMENT OF PUBLIC SERVICE REGULATION TO COOPERATE WITH THE OFFICE OF THE GOVERNOR AND THE HIGHWAY TRAFFIC SAFETY DIVISION OF THE DEPARTMENT OF INTERGOVERNMENTAL RELATIONS IN DEVELOPING THIS SYSTEM.

WHEREAS, the present system of compiling motor vehicle information is inefficient, uneconomical, and increasingly time-consuming, and

WHEREAS, many thousands of valuable man-hours are wasted yearly in long lines while receiving license plates, and

WHEREAS, the steadily increasing number of motor vehicles and drivers will only compound these problems, and

WHEREAS, current dissatisfaction with the present system has already led to the passage of Senate Resolution 11 (concerning the feasibility of establishing a Department of Motor Vehicles) in the first session of the Forty-third Legislative Assembly.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Office of the Governor is hereby requested to coordinate a study of the informational needs of the Motor Fuel Tax Division, Department of Revenue; Gross Vehicle Weight Division, Department of Highways; Registrar's Bureau, Department of Justice; Highway Patrol Bureau, Department of Justice; and the Department of Public Service Regulation in order to determine the procedures necessary for data processing and computerizing the relevant files of these agencies. That this study be completed during 1974 in order to present a cost estimate and appropriation, necessary to implement the study and develop a Motor Vehicle Information System (MVIS), to the 1975 Legislature.

Approved March 4, 1974

## **SENATE JOINT RESOLUTION NO. 55**

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA DIRECTING THE DEPARTMENT OF HIGHWAYS TO REEVALUATE HIGHWAY RESEEDING PRACTICES AND TO SEEK NEW WAYS TO EMPLOY

**SAFER AND MORE ECOLOGICALLY SOUND PRACTICES IN THE FUTURE.**

WHEREAS, present highway reseeding practices have, in some respects, failed to accomplish their purposes and in other ways raise serious questions about the efficacy of the program in general, and

WHEREAS, in many cases sod cover on areas disturbed by highway construction has not been established on many roads and unrevegetated rights-of-way invite the incursion of weeds, and

WHEREAS, some highways have excessively steep borrow pits that are both ecologically unsound and of questionable safety.

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:**

That the Department of Highways is hereby directed to undertake a thorough review and study of highway reseeding practices and policies in Montana, to prepare a report and make recommendations with respect to such practices and policies, and to prepare suggested legislation for the consideration of the governor and the 1975 Legislature. Matters that require special attention include topsoil conservation and reclamation in connection with all highway projects; exploration of the safety features (or hazard) of borrow pits; exploration of grading of borrow pits from an ecological point of view (studying the best methods of minimizing weed invasion and erosion, and possibilities of maximizing productivity); and investigating reseeding practices on county roads and the status of reseeding on such roads, in particular whether the county commissioners are complying with their responsibilities under Section 32-2813, R.C.M. 1947.

Approved March 9, 1974

**SENATE JOINT RESOLUTION NO. 56**

**A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA AMENDING JOINT RULE 6-6 TO REQUIRE THE NAME OF AN ADMINISTRATIVE OR EXECUTIVE AGENCY OR DEPARTMENT REQUESTING INTRODUCTION OF A BILL TO BE PRINTED ON THE BILL.**

**BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:**

That Joint Rule 6-6 be amended as follows:

6-6. Bills will be checked by the staff of the Legislative Services Division of the Legislative Council prior to consideration by a committee of the legislature, for proper format, style, and legal form. A stamp will be affixed to the bill cover and initialed indicating this review. If such stamp is not affixed at the time the bill is delivered to the appropriate committee

chairman, the chairman shall cause the bill to be transmitted to the Legislative Services Division for such review. Members should make every effort to present proposed bills to the Division in advance of introduction of the bill. Bills will be entered on the automated bill drafting equipment and typed to facilitate a more rapid reproduction. If a bill is not so entered prior to introduction, it will not be considered by any committee until it has been so entered.

A bill may be introduced by endorsing it with the name of a member or committee and presenting it to the chief clerk or secretary in quadruplicate. Bills, joint resolutions, and simple resolutions shall be numbered consecutively in each biennium in separate series in the order of their receipt.

Any bill introduced by request of an administrative or executive agency or department shall be so indicated following the names of the sponsors, "By Request of \_\_\_\_\_ (Name of Agency)."

Bills may be pre-filed, numbered and pre-printed prior to a legislative session. This will be the responsibility of the staff of the Legislative Services Division of the Legislative Council. Actual signatures may appear on the face of the pre-filed bill or signatures may be obtained on a consent form from the Legislative Services Division. Additional sponsors may be added at the time of introduction on the first legislative day, on motion of the chief sponsor. These names will be forwarded to the Legislative Services Division to be included on the face of the bill following standing committee approval.

Approved March 9, 1974

## SENATE JOINT RESOLUTION NO. 58

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE COMMITTEE ON LEGISLATIVE PRIORITIES TO ASSIGN AN INTERIM COMMITTEE TO CONTINUE AND TO EXPAND STUDY OF THE ELECTION LAWS RELATING TO LOCAL GOVERNMENTS AND TO REPORT ITS FINDINGS AND RECOMMENDATIONS TOGETHER WITH ANY NECESSARY LEGISLATION TO THE SECOND SESSION OF THE FOURTY-FOURTH LEGISLATIVE ASSEMBLY.

WHEREAS, the joint interim Subcommittee on Constitution, Elections and Federal Relations has undertaken a study of the election laws pertaining to cities and towns under authority of House Joint Resolution Number 14 of this legislative assembly, and

WHEREAS, the investigation of the subcommittee has disclosed that substantial portions of the election laws are duplicative and unnecessarily detailed, and



WHEREAS, with sufficient time the appropriate committee would be able to draft legislation to streamline and simplify the election laws, to the benefit of election officials in all types of local government.  
NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Committee on Legislative Priorities is hereby requested to assign an appropriate interim committee to conduct a study of the election laws pertaining to all units of local government, including school districts, and to report to the second session of the Forty-fourth Legislative Assembly its findings and recommendations as to the consolidation and simplification of the election laws, including therein proposed legislation, if such is found desirable, for uniform standards for the conduct of city, town, county, school district, and other special district elections, for the consolidation of such elections, and for the deletion of unnecessary detail from the statutes prescribing the duties of election officers, and

BE IT FURTHER RESOLVED, that the appropriate committee is requested to carry out this study in continuing consultation with a representative variety of local government election officials, and to summarize such consultation and coordination activities in a section of its final report.

Approved March 4, 1974

### **SENATE JOINT RESOLUTION NO. 59**

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA DIRECTING THE LEGISLATIVE CONSUMER COMMITTEE AND THE CONSUMER COUNSEL TO CONDUCT A STUDY AND MAKE RECOMMENDATIONS CONCERNING THE REMUNERATION PAID TO OWNERS OF NATURAL GAS RIGHTS FOR THEIR RESOURCE.

WHEREAS, the entire world is faced by an energy crisis of severe proportion, and

WHEREAS, there exist in Montana large quantities of already located natural gas which can help alleviate the shortage, and

WHEREAS, the likelihood is very great that there are vast quantities of natural gas yet to be discovered in Montana, and

WHEREAS, due to the scarce supply and the heavy demand those who deliver natural gas to the consumer are charging and receiving more.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Consumer Committee and the Consumer Counsel be directed to make a fact-finding study and report their recommendations to the 1975 session of the legislature on the subject of the sufficiency of compensation paid to land and mine owners for the natural gas on their property.

Approved March 8, 1974

**SENATE JOINT RESOLUTION NO. 61**

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING CONGRESS TO ALLOW MONTANA TO BE ON MOUNTAIN STANDARD TIME FROM NOVEMBER FIRST THROUGH MARCH FIRST.

WHEREAS, the recent pre-emption by congress with regard to arbitrarily reinstituting Daylight Saving Time for all states regardless of geographic location or latitudinal position has caused considerable discomfort in Montana, and

WHEREAS, our Lieutenant Governor Bill Christiansen has indicated that Montana's energy conservation due to Montana's directed return to Mountain Daylight Time will be marginal if any at all, and

WHEREAS, the youth of Montana are being subjected to increased potential of serious injury due to automobile accidents while on the way to school in virtual total darkness.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the secretary of state is directed to request that the U.S. Congress reassess its action in pre-empting the state with regard to uniform return to Daylight Saving Time, in that they provide some mechanism for local state option and adoption.

BE IT FURTHER RESOLVED, that the secretary of state is requested to send copies of this joint resolution to the U.S. Senate and House of Representatives and the members of Montana's Congressional delegation.

Approved March 4, 1974

**SENATE JOINT RESOLUTION NO. 62**

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE COMMITTEE ON PRIORITIES TO ASSIGN A JOINT SUBCOMMITTEE TO STUDY ALL ASPECTS OF LICENSING DONE BY STATE AND LOCAL GOVERNMENTAL UNITS IN MONTANA EXCEPT AS RELATED TO MOTOR VEHICLES AND FISH AND GAME LICENSES; AND TO REPORT ITS FINDINGS WITH RECOMMENDATIONS AND DRAFT LEGISLATION FOR THE CONSOLIDATION OF LICENSES AND LICENSING FUNCTIONS TO THE 1975 SESSION OF THE LEGISLATURE.

WHEREAS, the current state of governmental licensing places a heavy, and in part unnecessary, burden upon Montana businessmen financially and in terms of time, and

WHEREAS, many of the licenses cost more to administer than they provide in revenue, and

WHEREAS, a careful consolidation of licenses and licensing functions would result in savings to the state and to its licensees as well as enhance the protection afforded through licensing to the citizens of Montana.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Committee on Priorities assign the Legislative Council to study all aspects of licensing done by state and local government in Montana, except as related to motor vehicles and fish and game licenses, and report its findings with recommendations and draft legislation for consolidation of licenses and licensing functions to the 1975 session of the legislature.

Approved March 11, 1974

### **SENATE JOINT RESOLUTION NO. 63**

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE COMMITTEE ON PRIORITIES TO ASSIGN THE LEGISLATIVE CONSUMER COMMITTEE AND THE CONSUMER COUNSEL TO CONDUCT A STUDY, TO WORK IN CONJUNCTION WITH OTHER APPROPRIATE GOVERNMENT AGENCIES TO ACHIEVE EQUITABLE FREIGHT RATES FOR COMMODITIES SHIPPED WITHIN OR TO AND FROM THE STATE OF MONTANA BY RAIL, AND TO REPORT ITS PROGRESS AND RECOMMENDATIONS TO THE 1975 SESSION OF THE LEGISLATURE.

WHEREAS, freight rates charged Montana producers have historically been quite high whether the products were shipped east or west, and

WHEREAS, Montana products are not processed here, but are shipped in bulk and in their natural form, and

WHEREAS, railroads have recently developed more economical methods of freighting, including the unit train, and

WHEREAS, Montana is dependent upon railroads to transport much of the finished products that are consumed in our state, and

WHEREAS, freight rates have remained the same whether the shipper is able to ship his products in the unit trains or in a less efficient manner.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Committee on Priorities be requested to assign the Legislative Consumer Committee and the Consumer Counsel to conduct a study to work with other governmental agencies to achieve equitable freight rates for all commodities shipped within, to or from Montana, and to report its progress and recommendations to the 1975 session of the legislature.

Approved March 15, 1974

**SENATE JOINT RESOLUTION NO. 64**

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA SUBMITTING TO THE QUALIFIED ELECTORS OF THE STATE OF MONTANA AN AMENDMENT TO THE CONSTITUTION OF MONTANA AMENDING ARTICLE II, SECTION 18 OF THE CONSTITUTION, RELATING TO WAIVER OF SOVEREIGN IMMUNITY BY THE STATE OF MONTANA.

BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That there be submitted to the qualified electors at the next general election a proposal for an amendment to the constitution of the state of Montana.

BE IT FURTHER RESOLVED, than the proposal shall read as follows: "It is proposed by the legislature of the state of Montana that Article II, Section 18 of the Montana constitution be amended to read as follows: "Section 18. STATE SUBJECT TO SUIT. The state, counties, cities, towns, and all other local governmental entities shall have no immunity from suit for injury to a person or property, except as may be specifically provided by law by a  $\frac{2}{3}$  vote of each house of the legislature."

BE IT FURTHER RESOLVED, that this full text of the above proposal be printed on the ballot along with the following words:

☐ For the above amendment.

☐ Against the above amendment."

BE IT FURTHER RESOLVED, that a copy of this resolution be transmitted to the Secretary of State on its final passage.

Approved March 16, 1974

**SENATE JOINT RESOLUTION NO. 65**

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK) AND THE POSTMASTER GENERAL OF THE UNITED STATES TO TAKE ALL NECESSARY AND TIMELY STEPS TO INSTITUTE SEVEN (7) DAY A WEEK AMTRAK PASSENGER SERVICE OVER ALL MONTANA AND CONNECTING ROUTES NOW IN OPERATION, INSTITUTE AMTRAK MAIL SERVICE OVER ALL MONTANA AND CONNECTING ROUTES NOW IN OPERATION, AND INSTITUTE A FULL CONNECTING AMTRAK PASSENGER AND MAIL SERVICE ON THE BURLINGTON,

NORTHERN AND COMPANY AND UNION PACIFIC RAILROAD LINE BETWEEN COUTTS, ALBERTA, CANADA, SWEET GRASS, MONTANA VIA SHELBY, GREAT FALLS, HELENA, BUTTE, MONTANA, AND SALT LAKE CITY, UTAH, THENCE TO NUEVO LAREDO, MEXICO, CALLED THE ROCKY MOUNTAIN INTERNATIONAL.

WHEREAS, the nation, and in this connection Montana, is faced with a shortage of automobile fuel and other middle distillates, and

WHEREAS, rail transportation effects a direct conservation of middle distillate fuel, and a proficient rail passenger service effects a conservation of automobile fuel by reducing highway automobile traffic, and

WHEREAS, the fuel shortage acutely affects and is detrimental to the citizens of Montana, because Montana is a state wherein its citizens are required to travel great distances commuting between its metropolitan areas, and

WHEREAS, this fuel shortage acutely affects the citizens of Montana's sister states desiring travel to and through Montana, this fuel shortage will be detrimental to Montana's tourist industry, and

WHEREAS, AMTRAK rail passenger service is inadequate to meet public demand, convenience and necessity because at present AMTRAK rail passenger service is not operated on an international daily basis, and there is no AMTRAK rail passenger service between Coutts, Alberta, Canada, and Sweet Grass, Great Falls, Helena to Salt Lake City, Utah and south to Mexico, and

WHEREAS, AMTRAK has corporate authority to add one additional AMTRAK Route per year on an experimental basis within the basic AMTRAK system.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the National Railroad Passenger Corporation (AMTRAK) and the Postmaster General of the United States are requested to take all necessary and timely steps to institute seven (7) day a week AMTRAK rail passenger and mail service on existing Montana and connecting AMTRAK routes, and

BE IT FURTHER RESOLVED, that the National Railroad Passenger Corporation (AMTRAK) and the Postmaster General of the United States are requested to take all necessary and timely steps to institute a full connecting seven (7) day a week AMTRAK rail passenger and mail service between Coutts, Alberta, Canada, Sweet Grass, Great Falls, Helena, and Butte, Montana, and Salt Lake City, Utah, on the Union Pacific Railroad line, thence on AMTRAK route to Nuevo Laredo, Mexico.

BE IT FURTHER RESOLVED, that the Secretary of State be directed to send duly certified copies of this resolution to the Honorable Thomas L. Judge, Governor of the state of Montana, the President of the United States, the Prime Minister of Canada, the President of the United States

of Mexico, the chairmen of the appropriate committees in both houses of Congress, each member of the Montana Congressional delegation, the Postmaster General of the United States, the President of AMTRAK, the governors of the states of Colorado, Idaho, Kansas, Oklahoma, Texas, Utah, and Wyoming, and the provincial government of Alberta.

Approved March 4, 1974

## **SENATE JOINT RESOLUTION NO. 66**

**A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA CALLING FOR AN INTERIM STUDY OF ALL MONTANA LAWS RELATING TO THE SALE AND USE OF FIREWORKS.**

WHEREAS, Congress has enacted Public Law 92-573 entitled the Consumer Product Safety Act, and

WHEREAS, this act created the Consumer Product Safety Commission, and

WHEREAS, one of the functions of this commission is to promulgate regulations relating to those fireworks devices which are to be allowed in interstate commerce, and

WHEREAS, another function of the commission is to specify those fireworks devices which are to be prohibited in interstate commerce, and

WHEREAS, the commission on May 9, 1973, published in the Federal Register of May 16, 1973, comprehensive regulations relating to performance standards, manufacturing standards, and labeling and safety standards for those fireworks devices which it proposes to permit in interstate commerce, and

WHEREAS, the commission has heretofore declared a number of fireworks devices as banned hazardous substances, and

WHEREAS, the commission proposes to declare additional kinds of fireworks devices as banned hazardous substances including all firecrackers, bottle rockets and all fireworks devices which explode with a report, and

WHEREAS, the Montana laws relating to the sale and use of fireworks devices were originally enacted in 1947 and most recently amended in substance in 1961, and

WHEREAS, the action of the Federal Consumer Product Safety Commission in regulating fireworks devices in interstate commerce makes it desirable that a review be conducted of Montana laws relating to fireworks devices, and

WHEREAS, the public health, welfare and safety require a comprehensive review and revision of all Montana laws relating to the sale and use of fireworks devices in Montana, and

WHEREAS, the expertise of those knowledgeable in the hazards posed by fireworks devices including fire departments, the volunteer firemen's associations, the Montana Fire Chiefs Association, and the office of the Montana Fire Marshal should be called upon, and

WHEREAS, those who are involved in the sale and use of fireworks devices in Montana who provide substantial employment and contribute to the economic well-being of their communities and who desire to contribute to the updating of these laws should be heard from, and

WHEREAS, it is desirable that all other persons with a contribution to make to the revising and updating of these laws be heard from and their views considered.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the priorities committee be requested to assign to an interim sub-committee a study of all Montana laws relating to the sale and use of fireworks devices and take testimony and receive evidence from all interested parties and thereafter prepare legislation for submission to the first session of the Forty-fourth Legislature.

Approved March 6, 1974

### SENATE JOINT RESOLUTION NO. 67

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE MONTANA STATE DEPARTMENT OF INSTITUTIONS TO IMPROVE HOSPITAL AND NURSING BED SPACE AND CARE TO VETERANS.

WHEREAS, hospital and nursing bed space for veterans has been and is inadequate in the State of Montana;

WHEREAS, veterans health care has been expanded by the Congress of the United States;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Montana State Department of Institutions survey possibilities for expanded care, hospital and nursing bed space in particular and, where possible, expand services for veterans.

BE IT FURTHER RESOLVED, that the Secretary of the Senate send copies of this joint resolution to the Director of the Department of Institutions and to the Montana Veterans Home in Columbia Falls.

Approved March 11, 1974

**SENATE JOINT RESOLUTION NO. 68**

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE PRIORITIES COMMITTEE TO ASSIGN TO AN INTERIM SUBCOMMITTEE A STUDY OF THE EXISTING LAWS OF THE STATE OF MONTANA IN ORDER TO DETERMINE WHAT CHANGES SHOULD BE MADE IN THESE LAWS IN ORDER TO ACHIEVE THE EQUALITY OF THE SEXES UNDER THE LAWS OF MONTANA, AND TO REPORT THEIR FINDINGS AND THEIR PROPOSALS FOR CHANGES IN THE LAW TO THE FIRST REGULAR SESSION OF THE FORTY-FOURTH LEGISLATURE.

WHEREAS, article II, section 4, of the Montana constitution prohibits discrimination against any person in the exercise of his civil or political rights on account of sex, and

WHEREAS, the legislature intends to accomplish a thorough and well considered implementation of the 1972 constitution, and

WHEREAS, numerous statutes currently exist in the Revised Codes of Montana 1947, which distinguish between persons on the basis of sex in terms of their rights and responsibilities under the law, and

WHEREAS, these statutes distinguishing between persons on the basis of sex are in many cases interrelated with many substantive laws and procedures necessary to the effective functioning of state and local government, and

WHEREAS, care and study are required to eliminate discriminatory provisions of the Revised Codes of Montana 1947, while preserving the essential features of these laws.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Committee on Priorities is requested to assign a detailed study of the laws of the state of Montana to a subcommittee of the Joint Standing Committee of the House and the Senate on Constitution, Elections and Federal Relations to meet during the interim between the adjournment of the Forty-third Legislature and the beginning of the Forty-fourth Legislature, and

BE IT FURTHER RESOLVED, that this joint subcommittee conduct a study and thorough analysis of the statutes currently enacted in the Revised Codes of Montana 1947, which distinguish between persons on the basis of sex in order to determine what changes should be made in these laws to achieve true legal equality of the sexes while preserving for all the people of Montana those essential protections which orderly government provides for its citizens, and

BE IT FURTHER RESOLVED, that the joint subcommittee report the results of its study and its recommendations for changes in the existing law together with proposed legislation to effect these changes to the first regular session of the Forty-fourth Legislature.

Approved March 15, 1974



**SENATE JOINT RESOLUTION NO. 69**

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REPEALING RULE 42-3.26(14)-S26200(1) OF THE MONTANA ADMINISTRATIVE CODE, CONCERNING STANDARDS FOR TAVERNS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the legislature wishes to encourage sidewalk cafes, open-air restaurants and taverns, and

WHEREAS, rule 42-3.26(14)-S26200(1) prohibits licensed liquor and beer retailers from selling liquor or beer outside of the building for which the license is issued.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the rule in section 42-3.26(14)-S26200(1) of the Montana Administrative Code, to the extent it prohibits the licensure of such open-air facilities, or prohibits them from being considered as parts of premises so licensed, is repealed.

BE IT FURTHER RESOLVED, that in order to give the Department of Revenue time to revise this rule in order to permit open-air taverns to operate, the effective date of this resolution is July 1, 1974.

Approved March 16, 1974

**SENATE JOINT RESOLUTION NO. 70**

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA DIRECTING THAT SELECT COMMITTEES OF THE SENATE AND THE HOUSE OF REPRESENTATIVES STUDY ALL ASPECTS OF THE WORKMEN'S COMPENSATION ACT, DRAFT PROPOSED LEGISLATION AND REPORT ITS FINDINGS AND RECOMMENDATIONS TO THE FIRST REGULAR SESSION OF THE FORTY-FOURTH LEGISLATURE.

WHEREAS, the Workmen's Compensation Act, the Workmen's Compensation Division and the program administered thereby have been the subject of much proposed legislation during the forty-third legislative session; and

WHEREAS, the Workmen's Compensation Division is currently being audited by the Legislative Auditor, and the Legislative Audit Committee has reported to the legislature that the Legislative Auditor's report detailing the findings of the audit is not complete and that said report

will not be published and distributed until said audit has been completed; and

WHEREAS, it is essential that the legislature be prepared, when the audit report is published, to immediately begin working on legislation dealing with the Workmen's Compensation Act and the Workmen's Compensation Division which is deemed necessary or desirable from the results of the audit report.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Committee on Committees in the Senate appoint a select bipartisan committee of four members and the Speaker of the House of Representatives appoint a select bipartisan committee of four members, the two committees to meet jointly in the interim between the forty-third legislative session and the forty-fourth legislative session, and to receive and study the Legislative Auditor's report regarding the Workmen's Compensation Division and to hold public hearings for the purpose of ascertaining the need for legislation dealing with the Montana Workmen's Compensation Act; and

BE IT FURTHER RESOLVED, that the committee solicit, receive, and consider evidence, suggestions and recommendations from individual employers, employers' groups, individual employees, representatives of organized labor, representatives of the insurance industry, representatives of the legal profession, the administrator of the Workmen's Compensation Division, the Attorney General of the state of Montana and all other persons or organizations interested in the administration of the Workmen's Compensation Act; and

BE IT FURTHER RESOLVED, that a copy of all Senate and House bills concerning proposals for amending the Workmen's Compensation Act which were introduced in either of the regular sessions of the forty-third legislature and which were not enacted into law be referred by the secretary of the Senate or the chief clerk of the House of Representatives to the chairman of the select committee in the house in which it originated for study, evaluation and recommendations; and

BE IT FURTHER RESOLVED, that the respective select committees, acting as a conference committee, report on proposed legislation together with their findings and evaluations, to the Senate and House of Representatives no later than 5:00 p.m. of the fifth legislative day of the 1975 session of the forty-fourth legislature.

Approved March 16, 1974

### HOUSE RESOLUTION NO. 33

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA TO THE MONTANA FISH AND GAME COMMISSION, TO THE HONORABLE THOMAS L. JUDGE, GOVERNOR OF THE STATE OF MONTANA, TO THE HONORABLE

MIKE MANSFIELD AND THE HONORABLE LEE METCALF, SENATORS FROM THE STATE OF MONTANA, TO THE HONORABLE RICHARD SHOUP AND THE HONORABLE JOHN MELCHER, REPRESENTATIVES FROM THE STATE OF MONTANA, TO THE UNITED STATES CORPS OF ARMY ENGINEERS AND TO THE UNITED STATES FOREST SERVICE URGING THE IMMEDIATE CONSTRUCTION AND OPERATION OF A FISH HATCHERY IN LINCOLN COUNTY, MONTANA.

WHEREAS, the forty-first legislative assembly of the state of Montana appropriated the sum of seven hundred and fifty thousand dollars (\$750,000) for the construction and operation of a fish hatchery in the Libby Dam area, Lincoln County, Montana, and

WHEREAS, this money shall come from the United States Corps of Army Engineers to allow for construction and operation of a fish hatchery in mitigation for fish losses occasioned by the construction of Libby Dam, and

WHEREAS, under the provisions of that appropriation, found in chapter 373 of the session laws of the forty-first legislative assembly of the state of Montana, the balance of any monies not expended by June 30, 1971, which were not encumbered by purchase order or obligated by other written contract did revert to the funds from which they were appropriated,

WHEREAS, the Army Corps of Engineers estimates that an additional sum of approximately four million dollars (\$4,000,000) is necessary for the construction of such fish hatchery, and

WHEREAS, the necessity of the fish hatchery still exists unsatisfied at present.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That a fish hatchery be constructed with all deliberate speed and operated in Lincoln County, Montana, to be paid for by an appropriate federal grant.

BE IT FURTHER RESOLVED, that the chief clerk of the house send copies of this resolution to the Montana fish and game commission, the Honorable Thomas L. Judge, Governor of the state of Montana, the Honorable Mike Mansfield and the Honorable Lee Metcalf, senators from the state of Montana, the Honorable Richard Shoup and the Honorable John Melcher, representatives of the state of Montana, the Commanding Officer of the Corps of Army Engineers and the Chief of the United States Forest Service.

Approved January 18, 1974

## HOUSE RESOLUTION NO. 44

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE

STATE OF MONTANA TO ADOPT RULES TO GOVERN ITS PROCEEDINGS IN ADDITION TO THE JOINT RULES.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the following rules are adopted:

House Rules

CHAPTER 1

Presiding Officer — Decorum, Order and Debate

H1-1. The house of representatives shall elect one of its members speaker. The house shall choose its other officers, and shall judge of the elections, returns, and qualifications of its members.

H1-2. The house shall elect one of its members speaker pro tempore who shall perform all of the duties of the speaker in the absence of that officer, and on such other occasions as the speaker may request.

H1-3. No member shall speak for longer than one-half hour in debate on any one motion or question.

H1-4. During committee reports the member reporting the measure under consideration from a committee may, if the measure is debated, open and close. If the debate extends beyond one day he may have one-half hour to close, even if he has used one-half hour in opening.

H1-5. No member shall speak more than once on the same question without the unanimous consent of the house, unless he has proposed or introduced the matter under debate, in which case he may speak in reply after all members choosing to speak have spoken.

CHAPTER 7

Committees

H7-1. The standing committees of the house are as follows:

1. Agriculture, Livestock and Irrigation
2. Bills and Journal
3. Business and Industry
4. Constitution, Elections and Federal Relations
5. Education
6. Finance and Claims
7. Fish and Game
8. Highways and Transportation
9. Judiciary
10. Labor and Employment Relations
11. Legislative Administration

12. Local Government
13. Natural Resources
14. Public Health, Welfare and Safety
15. Rules
16. State Administration
17. Taxation

The first named member of a committee is the chairman, and in his absence the next named member, and so on. No standing committee may consist of more than 17 members.

H7-2. The committee on rules shall consist of the speaker, the majority leader, and two other members of the majority party appointed by the speaker, the minority leader, and three members of the minority party designated by the minority leader and appointed by the speaker. The speaker shall appoint other standing committees, select committees, and house membership on joint committees and conference committees.

H7-3. All bills having "Do Pass" committee recommendations shall be deemed adopted and shall be placed on second reading.

If the committee report is that the bill "Do Not Pass," the bill shall be posted by the chief clerk of the house and the members of the house have 24 hours in which to indicate in writing to the chief clerk that they wish to have the bill debated. If a member so indicates, the bill will be placed on second reading for debate. If no such indication is made, the committee report will be voted on order of business number 2 without debate.

## CHAPTER 8

### Rules and Journal

H8-1. (1) A motion to amend or adopt a rule of the house shall be referred to the committee on rules and journal, which shall report no later than the next legislative day. Unless recommended by the committee on rules and journal, no house rule shall be amended or adopted except by a two-thirds vote.

(2) A house rule may be suspended temporarily for a specified purpose by unanimous consent.

H8-2. Mason's Manual of Legislative Procedure governs the proceedings of the house of representatives in all cases not covered by these rules.

Approved January 10, 1974

## HOUSE RESOLUTION NO. 45

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE  
STATE OF MONTANA DIRECTING THE HOUSE TAXATION

COMMITTEE TO COMMENCE INVESTIGATION INTO THE FEASIBILITY AND VALUE OF A MULTISTATE TAX APPROACH TO COAL TAXATION.

WHEREAS, the vast north central coal reserves are not contained within any one state and, in fact, extend under at least four states, and

WHEREAS, there is no consistency in the method and rate by which the various states tax the extraction and development of coal resources, and

WHEREAS, this inconsistency encourages adjoining states and the coal companies operating in those states to force an individual state into taking an approach to coal taxation which may not be compatible with that state's economic needs, and

WHEREAS, regional cooperation among adjoining states most heavily affected by coal development may provide a solution to inconsistent coal taxation.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the house committee on taxation be directed to investigate the feasibility and value of multistate taxation of coal with the Dakotas and Wyoming, and to contract and cooperate joining with these other states to attain that end, and

BE IT FURTHER RESOLVED, that the committee be directed to recommend possible alternatives which will provide a basis for equal tax treatment of coal among those states facing large scale coal development to the next regular session of the Montana legislature.

Approved March 14, 1974

## HOUSE RESOLUTION NO. 46

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING CONGRESS TO UNDERTAKE A COMPREHENSIVE INVESTIGATION OF FUTURE TRANSPORTATION PRIORITIES, PARTICULARLY AS THEY AFFECT MONTANA.

WHEREAS, the present and future transportation needs of the nation and Montana, in particular, are changing, and

WHEREAS, railroads serving Montana, are continuing the practice of abandoning presently unused or little used rail facilities although no full assessment of Montana's projected needs has been made, and

WHEREAS, present federal regulation in this area does not take into account possible future needs.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That to preserve rail facilities that may be utilized sometime in the future, the Congress of the United States is requested to immediately undertake a comprehensive investigation of future transportation priorities, particularly as they affect Montana, and

BE IT FURTHER RESOLVED, that copies of this resolution be sent by the Secretary of State of Montana to the chairman of the Interstate Commerce Commission, the chairmen of the Commerce Committees of both the House of Representatives and the Senate, and to the Montana Congressional delegation.

Approved February 16, 1974

### HOUSE RESOLUTION NO. 47

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA DIRECTING THE LEGISLATIVE COUNCIL TO DETERMINE EFFECTIVE AND EQUITABLE METHODS OF LIMITING THE NUMBER OF BILLS WHICH CAN BE INTRODUCED AT ONE SESSION OF THE LEGISLATURE.

WHEREAS, the complexity and urgency of the problems facing our state are increasing rapidly, and

WHEREAS, in the course of its work the legislature must deal with the problems, and

WHEREAS, much legislative time and consideration must be given to these challenges if they are to be successfully overcome, and

WHEREAS, the present workload of the legislature is too great to allow proper consideration of these problems.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be directed to conduct a study to determine effective and equitable methods of limiting the number of bills which may be introduced at any one legislative session, and to report its recommendations to the 1975 session of the legislature, and

BE IT FURTHER RESOLVED, that a copy of this resolution be sent to the Executive Director of the Legislative Council by the Clerk of the House.

Approved February 5, 1974

### HOUSE RESOLUTION NO. 49

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING HOUSING AND RELATED CARE FACILITIES FOR THE ELDERLY.

WHEREAS, we have carefully studied the President's housing message of September 19, 1973 and

WHEREAS, our dedication to the purposes of this organization requires that we formulate and communicate our views and positions vis-a-vis federal housing policies and programs as they relate to the housing and related needs of the low-moderate income elderly.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the House of Representatives of the State of Montana representing housing and related care facilities for the elderly, makes known its views and urges actions as follows:

1. The proposal for direct housing assistance payments to lower income individuals and families has merit and we particularly approve the President's stated intention of initially implementing this program to assist the lower income elderly. However, we support fully funding and implementation of the direct housing assistance payment plan for the elderly immediately rather than delaying it until 1975.

2. We join with all other knowledgeable authorities in giving stated recognition to the fact that the housing and related needs of the elderly are complex and manifold and, therefore, no single program can meet the needs of all of the low-moderate income elderly . . . since there are various groups of the elderly, each of which has specific and unique needs. For example, an elderly couple in their early-to-midsixties who enjoy good health and moderate income obviously do not have the same needs as single and widowed females in their late seventies and who often have incomes barely at subsistence level. Stated more simply, the most needful group of the elderly need not only housing but the security, companionship and independence that can only be provided by specialized housing and related care facilities.

3. These specialized facilities represented are effectively responding to the special housing and related needs of that segment of our elderly population for whom a direct housing assistance payment would not solve their needs and desires for physical, emotional and financial security combined with the need and desire for companionship, social recreational and constructive activity in a non-institutional atmosphere which enhances dignity and independence.

4. By far the most successful and economical federal senior housing loan program.

5. The benefits of 202 type housing to a community have had profound impact in upgrading neighborhoods and in providing a ready talent pool to staff volunteer community programs.

6. We strongly recommend re-institution of the 202 type approach as a primary vehicle for housing the elderly. Furthermore, we heartily recommend that a re-instituted 202 type program be made even more flexible than the old program, in the sense of allowing for a broad spectrum



of devices for meeting the total needs — housing, health, social, recreational, nutritional — of our aging people.

BE IT FURTHER RESOLVED, that copies of this resolution be transmitted by the Clerk of the House of the State of Montana to the Honorable Richard M. Nixon, President of the United States, Honorable Gerald Ford, Vice President of the United States, Honorable Mike Mansfield, Majority Floor Leader of the United States Senate, Honorable Lee Metcalf, United States Senate, Congressman Richard S. Shoup, House of Representatives, Congressman John W. Melcher, House of Representatives.

Approved February 18, 1974

## HOUSE RESOLUTION NO. 50

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA RECOMMENDING THE APPOINTMENT OF THE EMPLOYMENT SECURITY DIVISION, MONTANA STATE DEPARTMENT OF LABOR AND INDUSTRY BY THE GOVERNOR OF THE STATE OF MONTANA FOR THE PURPOSE OF ADMINISTERING THE COMPREHENSIVE EMPLOYMENT AND TRAINING ACT OF 1973.

WHEREAS, the President on December 28, 1973, signed into law the Comprehensive Employment and Training Act of 1973, which act makes federal monies available to state and local governments for the purpose of providing a wide array of manpower services to citizens, and

WHEREAS, the Employment Security Division, Montana State Department of Labor and Industry has acquired considerable expertise in rendering service to the public under the Wagner-Peyser Act, the Veterans Readjustment Act, the work incentive program, the food stamp program, the unemployment insurance laws; plus many other federally assisted manpower training and support programs, and

WHEREAS, the Employment Security Division has 23 strategically located local offices within the state and the necessary delivery system functioning and in place, and

WHEREAS, the Employment Security Division has a past exemplary record in program accomplishment, referrals, job development and placement to date under the aegis of categorical manpower programs, and

WHEREAS, this body desires to avoid a duplication of services, and excessive administrative costs, and

WHEREAS, the Governor of the State of Montana as the prime sponsor in full control of the Comprehensive Employment and Training Act of 1973, has the authority to name an administering agency.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Governor of the State of Montana consider naming the Employment Security Division of the Montana State Department of Labor and Industry as an administering agency for the Comprehensive Employment and Training Act of 1973.

Approved February 26, 1974

## HOUSE RESOLUTION NO. 51

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE COMMITTEE ON PRIORITIES TO ASSIGN TO THE APPROPRIATE STANDING COMMITTEE A STUDY CONCERNING THE EFFECTS OF PROHIBITING AND CONTROLLING OWNERSHIP AND USE OF AGRICULTURAL LAND IN MONTANA BY FOREIGN AND DOMESTIC CORPORATIONS AND OTHER "NON-AGRICULTURAL" ENTITIES AND TO HAVE IT REPORT ITS FINDINGS AND RECOMMENDATIONS TO THE FIRST REGULAR SESSION OF THE FORTY-FOURTH LEGISLATURE.

WHEREAS, agriculture is the leading industry in the state of Montana, last year producing over one billion dollars (\$1,000,000,000) worth of goods; and

WHEREAS, corporate ownership of agriculture has been a concern of the independent family farmer for some time; and

WHEREAS, in recent years movement of corporations into farming and ownership of agricultural land by "non-agricultural" entities has increased.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Committee on Priorities is requested to assign to the appropriate standing committee a study concerning the effects of prohibiting and controlling ownership and use of agricultural land in Montana by foreign and domestic corporations and other "non-agricultural" entities and including in the study a complete survey and analysis of ownership, leasing, or other control of agricultural land and the effects of the practice of agriculture by corporations, trusts, conglomerates, and other entities whether agricultural or non-agricultural in nature.

BE IT FURTHER RESOLVED, that the committee submit a written report containing its findings, recommendations and a draft of any proposed legislation for consideration by the first regular session of the Forty-fourth Legislature.

Approved February 18, 1974

**HOUSE RESOLUTION NO. 52**

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE DEPARTMENT OF REVENUE TO MAKE A STUDY OF FACTORS INVOLVED IN ACHIEVING MORE UNIFORM TREATMENT OF PUBLIC AND PRIVATE PENSION, ANNUITY AND SIMILAR TYPE PLANS UNDER THE MONTANA INCOME TAX LAWS AND IN CONFORMING MONTANA LAW MORE CLOSELY TO FEDERAL LAW IN THE TAXATION TREATMENT OF SUCH PLANS, AND TO RECOMMEND POSSIBLE LEGISLATION TO THE NEXT REGULAR SESSION OF THE MONTANA LEGISLATURE.

WHEREAS, some disparity presently exists within the various Montana statutory public pension, annuity and similar type plans; and

WHEREAS, there is considerable disparity in the way Montana law treats public pension, annuity and similar type plans and treats comparable private plans particularly in regard to state income taxation; and

WHEREAS, the treatment of certain public pension and retirement plans under Montana state income tax laws does not conform with the treatment of such public pension and retirement plans under federal income tax laws; and

WHEREAS, Montana income tax laws currently treat federal pension and annuity plans differently from comparable state plans; and

WHEREAS, it is a desirable state policy that all residents living on the proceeds of disability pensions, retirement pensions or annuities, survivors' pensions or annuities or similar plans should be treated equally and fairly under the law regardless of whether the plans are public or private, state or federal;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

THAT the department of revenue be requested to conduct a study of the present state and federal income tax laws relating to taxation of pensions, annuities and similar types of plans;

THAT this study include consideration of the types and value of such plans as currently received by Montana residents and taxpayers, the extent of employee contribution under the plans and the state and federal tax consequences of this contribution, the treatment of disability pensions and death benefit plans under state and federal law, the treatment of state and federal pension and annuity plans under Montana income tax laws, the disparity between state and federal treatment of public and private pension, annuity and similar plans, and the tax consequences of this disparity, the disparity in treatment of public and private plans under Montana income tax laws and the tax consequences of this disparity, the judgments of recognized tax policy experts concerning preferred approaches to taxation of pensions, annuities and similar benefits; and

THAT the department of revenue report to the next regular session of the Montana legislature the results of its study together with recom-

mendations for changes in existing Montana income tax law based on the results of the department's study.

Approved February 21, 1974

## HOUSE RESOLUTION NO. 53

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA RELATIVE TO STUDYING THE POSSIBILITY OF CONSTRUCTING AN AREAWIDE SEWAGE TREATMENT SYSTEM FOR ALL THE COMMUNITIES SURROUNDING FLATHEAD LAKE, REQUESTING THE GOVERNOR TO TAKE CERTAIN ACTIONS UNDER THE FEDERAL WATER QUALITY ACT OF 1972, REQUESTING THE COMMITTEE ON PRIORITIES TO ASSIGN THE APPROPRIATE STANDING COMMITTEE TO STUDY STATUTORY PROVISIONS RELATIVE TO REGIONAL SEWAGE TREATMENT SYSTEMS, AND REQUESTING THAT THE AFFECTED UNITS OF LOCAL GOVERNMENT BE CONSULTED AND PARTICIPATE IN SUCH STUDIES.

WHEREAS, the introduction of sewage into lakes and lacustrine ecosystems frequently hastens the biological aging of such systems, causing eutrophication and other forms of interference with beneficial water uses; and

WHEREAS, the waters of Flathead Lake, long celebrated for their clarity, are highly vulnerable to eutrophication and other pollution problems arising from the overloading of sewerage and subsurface disposal systems; and such problems have begun to appear in the lake; and

WHEREAS, considering that Flathead Lake is the largest body of fresh water west of the Mississippi River, and the fame of its scenic beauty is widespread, there are local, state, and national interests in the biological integrity of the lake; and

WHEREAS, the Congress has declared a national policy for the protection and restoration of the biological integrity of the nation's waters in the Federal Water Pollution Control Act of 1972, including programs in section 104(h) of the act for developing and demonstrating new or improved pollution control methods in lakes, and in section 208 for areawide waste treatment management plans; and

WHEREAS, an areawide waste treatment management plan could solve many of the water quality problems now appearing in Flathead Lake, and the local, state, and national interests require that steps be taken to preserve the option of developing such an areawide system; and

WHEREAS, regulations promulgated by the Environmental Protection Agency on September 14, 1973, provide a procedure whereby a governor may request the designation of an area for areawide waste treatment planning and facility development, or may reserve an area for future

requested designation, but either such action must be taken by March 13, 1974, according to the rule published as 40 CFR 126.15; and

WHEREAS, the Flathead Lake area would meet the federal criteria for designating an areawide waste treatment management region, and the units of local government have apparent authority to cooperate with one another on regional sewage treatment works under section 16-4401, and to cooperate across county lines on regional sewers under section 16-4502, but further study of the applicable statutes would clarify this authority.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the governor is requested to take appropriate action, before March 13, 1974, pursuant to the Environmental Protection Agency regulation published as 40 CFR 126.14 to designate the Flathead Lake area for areawide waste treatment management programs, or to preserve the option of making such designation in the future.

BE IT FURTHER RESOLVED, that the committee on priorities is requested to assign the appropriate standing committee to study the question of whether units of local government possess authority to cooperate on the construction of areawide waste treatment facilities serving two or more counties, to conduct such study in cooperation with the affected units of local governments and hold hearings in the region, and to recommend any statutory changes found necessary to the first session of the forty-fourth legislature.

BE IT FURTHER RESOLVED, that the governing bodies of the counties of Flathead and Lake and the cities and towns in those counties which lie within the drainage basin of Flathead Lake, are each requested to study the feasibility of joining in an areawide waste treatment facility, and to participate in the study made by the Legislative Council of the legal authority for such project, communicating to the legislature in this report their views on the feasibility of the proposal.

BE IT FURTHER RESOLVED, that the Chief Clerk of the House send copies of this resolution to the Governor, the Director of Health and Environmental Sciences, the members of the Environmental Quality Council, and the Honorable Russell E. Train, Administrator of the United States Environmental Protection Agency.

Approved February 12, 1974

## HOUSE RESOLUTION NO. 54

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA TRANSMITTING RECOMMENDATIONS TO THE DISTRICTING AND APPORTIONMENT COMMISSION REGARDING ITS PLAN AS REQUIRED BY ARTICLE V, SECTION 14, OF THE MONTANA CONSTITUTION.

WHEREAS, a districting and apportionment commission was appointed

and has prepared and presented a plan for redistricting and reapportioning the state into legislative and congressional districts as required by Article V, section 14 of the Montana constitution, and

WHEREAS, the House of Representatives has studied the plan submitted to it and has considered several recommendations regarding the plan, and

WHEREAS, the legislature must return the plan to the commission with its recommendations in accordance with the Montana constitution, and

WHEREAS, the legislature chooses to return recommendations in the form of a simple resolution from each house.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the House of Representatives recommends that the districting and apportionment commission make such minor changes in the plan proposed by county clerks and recorders as are necessary to facilitate election administration.

BE IT FURTHER RESOLVED, that the House of Representatives recommends that the districting and apportionment commission reconsider its policy of creating homogeneous districts where that policy would lead to polarization of interests in the legislature.

BE IT FURTHER RESOLVED, that a copy of this resolution be sent to the secretary of state and to the chairman of the districting and apportionment commission in Great Falls.

Approved February 6, 1974

## HOUSE RESOLUTION NO. 55

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE CIVIL AERONAUTICS BOARD OF THE DEPARTMENT OF TRANSPORTATION TO ESTABLISH REGULATIONS WHICH WOULD PROVIDE FOR CONTINUED AIR SERVICE DURING PERIODS WHEN AN AIRLINE PROVIDING SOLE SERVICE IS SHUTDOWN; AND REQUESTING THE MONTANA CONGRESSIONAL DELEGATION TO SUPPORT H.R. 3282 AND S. 1665, BILLS WHICH WOULD ABOLISH MUTUAL AID PACTS AMONG AIRLINES.

WHEREAS, the availability of commercial air transport plays an important role in Montana's economic well-being, and

WHEREAS, many Montana cities do not have competitive air service on major routes, and

WHEREAS, any prolonged shutdown of service results in great economic dislocation to the people who rely on the airline for transportation, and

WHEREAS, a prolonged shutdown of service results in severe economic hardship to the airports which are dependent on landing fees for much of their financing, and

WHEREAS, the citizens of Montana have within the past two (2) years experienced the unhappy effects of a prolonged shutdown, and

WHEREAS, proper planning now can prevent a recurrence of past problems.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Chairman of the Civil Aeronautics Board of the Department of Transportation be requested to establish regulations which will provide air service during periods of shutdown.

BE IT FURTHER RESOLVED, that the Montana congressional delegation be urged to support Congressman Karth's bill, H.R. 3282, and Senator Gravel's bill, S. 1665, which have as their purpose the abolishment of mutual aid pacts which tend to discourage quick settlement of labor disputes.

BE IT FURTHER RESOLVED, that the Secretary of State be directed to send copies of this resolution to the Secretary of Transportation, the Chairman of the Civil Aeronautics Board, and the members of the Montana Congressional delegation.

Approved March 8, 1974

## HOUSE RESOLUTION NO. 57

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA DIRECTING THE MONTANA ARTS COUNCIL TO COMMISSION A STATUE OF JEANNETTE RANKIN FOR PLACEMENT IN THE ROTUNDA OF THE STATE CAPITOL.

WHEREAS, the late Jeannette Rankin of Montana brought the attention of the world to herself and the people of Montana by winning a seat in the United States House of Representatives and becoming the first woman to sit in any major national legislative body, and

WHEREAS, in her two terms in Congress and throughout her life, Jeannette Rankin displayed exceptional qualities of courage, candor, and commitment to moral principles of which the people of Montana are justly proud.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Montana Arts Council be directed to commission a statue of the late Jeannette Rankin of Montana, which shall be a life-sized likeness and which shall include a plaque, inscription, or other verbal description of her significance to Montana, to the United States of America, and to

the dignity of women. In granting the commission the council shall consider incorporating native Montana metals or stone, and

BE IT FURTHER RESOLVED, that the council shall award the commission subject to the appropriation of funds, if the council determines that an appropriation is needed. The council may accept gifts and grants for the purposes of this act and shall apply to federal agencies authorized to make grants for such purposes, and

BE IT FURTHER RESOLVED, that the department of administration shall place the statue in the northeast corner of the rotunda in the state capitol, and shall move the plaque now in that corner to another suitable location within the capitol, and

BE IT FURTHER RESOLVED, that a copy of this resolution be forwarded to the chairman of the Montana Arts Council with the request that he proceed as speedily as possible with this project.

Approved March 1, 1974

## HOUSE RESOLUTION NO. 58

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING SELF-REGULATION WITHIN THE PRIVATE EMPLOYMENT AGENCY BUSINESS.

WHEREAS, private employment agencies in Montana are generally self-regulating and provide reasonable fees and contracts for their services, and

WHEREAS, there are, however, certain private employment agencies which are conducting business in a manner which takes serious advantage of job seekers as follows:

(1) Certain private employment agencies charge a fee ranging from forty percent (40%) to fifty percent (50%) of a two hundred dollar (\$200) monthly salary and ranging upwards on approximately every twenty dollars (\$20) increase in monthly salary to as much as one hundred twenty percent (120%) of the first month's salary, when such salary reaches one thousand dollars (\$1,000) per month and if fees are not paid within three (3) days of acceptance of employment a charge of one percent (1%) per month is added to the fee, if not paid within thirty (30) days;

(2) When employment contract is for less than ninety (90) days a fee of twenty percent (20%) is charged on the basis of entire wages or salary;

(3) When employment is accepted and employee fails to report for work or is terminated voluntarily or through his own fault, a full fee must be paid;

(4) A person is referred to an employer and does not accept or is rejected by an employer, and such information is revealed to another person the applicant must pay the full fee charged for the position the salary would command;



(5) An applicant must sign a binding contract for payment of fees relative to the above mentioned conditions, and

WHEREAS, these unfair practices have resulted in the introduction of HB 982 in the 1974 session of the legislature, which provides regulation of private employment agencies, and

WHEREAS, this bill was rejected because it would also have subjected those private employment agencies presently operating in a fair and respectable manner to regulation by the state.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That private employment agencies are urged to regulate themselves to discourage and eliminate unfair and unreasonable practices by certain private employment companies so that consideration of regulatory legislation in the next session would not be deemed necessary.

BE IT FURTHER RESOLVED, that the Department of Labor and Industry be requested to report to the First Regular Session of the Forty-fourth Legislature whether the complaints about unfair practices have minimized, and in the opinion of the department, whether the private employment agencies have been efficiently regulating themselves and that the unfair practices indicated in this resolution no longer exist.

BE IT FURTHER RESOLVED, that the Secretary of State send a copy of this resolution to the Department of Labor and Industry and all private employment agencies incorporated and conducting business in Montana.

Approved March 2, 1974

## HOUSE RESOLUTION NO. 60

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE FORTY-THIRD LEGISLATIVE ASSEMBLY AND ALL STATE AGENCIES TO SALVAGE FOR RECYCLING USED PAPER WHEREVER FEASIBLE.

WHEREAS, legislative assemblies and offices of state government use large amounts of paper each year, and

WHEREAS, this legislature, this state and this nation are concerned about the shortage of paper, and

WHEREAS, the efficient use of forest products is of great concern to all our citizens, and

WHEREAS, this legislature is desirous of a concerted effort toward a continual program of salvaging paper products for re-use, and

WHEREAS, a new industry in the state of Montana has indicated its willingness to cooperate with the Forty-third Legislative Assembly in initiating an immediate program of recycling.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That this legislative assembly lead the way by immediately putting into effect a program, wherever feasible, for all concerned to aid in the salvaging of used paper for purposes of recycling.

BE IT FURTHER RESOLVED, that a copy of this resolution be sent to the director of the Department of Administration urging all offices of state government to join the legislature in such a program.

Approved March 8, 1974

### HOUSE RESOLUTION NO. 61

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE UNITED STATES CONGRESS TO TEMPORARILY SUSPEND PERTINENT PROVISIONS OF THE JONES ACT IN ORDER TO INCREASE THE SUPPLIES OF AMMONIA OR NITROGEN FOR USE IN FERTILIZER.

WHEREAS, fertilizer often is necessary to insure a high crop yield, and

WHEREAS, fertilizer is in short supply in the United States, and

WHEREAS, the state of Alaska has substantial quantities of ammonia or nitrogen which could be shipped to the continental United States, and

WHEREAS, the Jones Act prohibits transporting such materials unless it is carried in United States bottoms from one United States point to another United States point, and

WHEREAS, United States ships do not now exist to move the materials in the necessary quantities.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the House of Representatives of the state of Montana supports the efforts of agricultural producers to establish a more sufficient supply of fertilizer during the present shortage.

BE IT FURTHER RESOLVED, that the United States Congress temporarily suspend pertinent sections of the Jones Act which prevent the transporting of adequate quantities of fertilizers from Alaska to the continental United States.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the Montana Congressional Delegation.

Approved March 1, 1974

**HOUSE RESOLUTION NO. 62**

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE DEPARTMENT OF BUSINESS REGULATION TO STUDY THE FEASIBILITY OF A STATE-OPERATED MILK COMPONENTS TESTING PROGRAM AND TO REPORT ITS FINDINGS TO THE HOUSE OF REPRESENTATIVES IN 1975.

WHEREAS, the dairy industry and the consumer may each benefit from a program to test the components of milk under the auspices of the state of Montana by its milk control division in the Department of Business Regulation.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Department of Business Regulation is requested to study the feasibility of operating, through the Milk Control Division, a program for testing licensed dairy milk for butterfat, solids-not-fat and/or protein as a measure for determining its market value for sale to milk plants where product is to be processed, distributed and consumed in Montana, and to report its findings, together with drafts of bills for such proposed legislation as may be recommended, to the Speaker of the House, or if the legislature is not in session, to the Legislative Council.

Approved March 14, 1974

**HOUSE RESOLUTION NO. 66**

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA MEMORIALIZING FRED WHITESIDE AND DIRECTING THE MONTANA ARTS COUNCIL TO COMMISSION A STATUE OF WHITESIDE.

WHEREAS, the late Fred Whiteside of Kalispell served many sessions as an honorable member of the Montana Legislature, and

WHEREAS, Whiteside saved the taxpayers of the state several millions of dollars when, as a freshman legislator in 1897, he exposed a scheme by the first Capitol Commission to raise five million dollars (\$5,000,000) for a capitol building, then build one for two million dollars (\$2,000,000) and pocket the difference, and

WHEREAS, Whiteside's expose was nearly crushed by lack of support from the special investigating committee of which Whiteside was a member and would have been had Whiteside not been permitted to file a minority report, and

WHEREAS, Whiteside's expose was vindicated by a grand jury investigation and by the twelve (12) man jury which cleared him of libel charges brought by the Capitol Commissioners, and

WHEREAS, a new Capitol Commission appointed by Governor Robert Smith built the state capitol building for less than half a million (\$500,000), and

WHEREAS, Whiteside played a prominent role in exposing the bribery of this honorable body by W. A. Clark of Butte in Clark's successful attempt to purchase a seat in the United States Senate for an estimated two to three million dollars (\$2,000,000-\$3,000,000), and

WHEREAS, Whiteside was again forced to persevere against nearly insurmountable opposition and lack of support from his colleagues, even suffering the pains of censure and the humiliation of expulsion from this honorable body before reason prevailed and he was permitted to serve many additional sessions, and

WHEREAS, Whiteside traveled to Washington, D.C., after Clark's dishonorable election, and successfully convinced the United States Senate of Clark's machinations so that the Senate expelled Clark, and

WHEREAS, a large plaque commemorating Clark may be found in the rotunda of the Montana Capitol, which at the same time is barren of any memorial to Whiteside.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That this body pay long overdue tribute to Fred Whiteside as a former member of this body and for his faithful and valiant service to his state and his nation, and

BE IT FURTHER RESOLVED, that the Montana Arts Council be directed to commission an artist to prepare a life-sized likeness of Fred Whiteside with funds to be appropriated by the Legislature, and

BE IT FURTHER RESOLVED, that the statue of Fred Whiteside be placed in the rotunda of the Capitol, along with a plaque outlining the highlights of his life and his leadership in fighting corruption in Montana.

Approved March 15, 1974

## HOUSE RESOLUTION NO. 67

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING CONGRESS TO BUILD AN INTERPRETIVE CENTER AT THE BISON RANGE AT MOIESE, MONTANA.

WHEREAS, the National Bison Range at Moiese, Montana, offers a unique opportunity to see, in their natural habitat, the bison that once covered the plains, and

WHEREAS, an interpretive center at the Bison Range is needed to offer much more information concerning the environment, behavior and history of the bison and the history of the particular herd at Moiese, and

WHEREAS, many of the people who first established the Moiese herd and have artifacts and information, that could be donated to the interpretive center, are now alive, and

WHEREAS, these people might be reluctant to donate their artifacts and information to a museum but would willingly give such to a local center, and

WHEREAS, the United States Department of the Interior presently has long-range plans for an interpretive center at the Bison Range, but such plans may prohibit taking advantage of the artifacts and information held by pioneers of the area, because of the older age of these pioneers, and

WHEREAS, fences, roads, buildings, and the need for frequent use of motorized equipment all conflict with wilderness status, and

WHEREAS, the intensive management program associated with the herd of bison precludes wilderness designation, and

WHEREAS, a Bureau of Sport Fisheries and Wildlife study has concluded that none of the National Bison Range is suitable for inclusion in the National Wilderness Preservation System.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Montana congressional delegation be directed to inform the Congress of the United States, and the appropriate federal agencies, of interest in and desire in Montana for an interpretive center at the Bison Range at Moiese, Montana, and to urge the Department of the Interior to take immediate steps to begin organization and construction of such a center, and

BE IT FURTHER RESOLVED, that copies of this resolution be sent to the Montana congressional delegation and to the Governor of the state of Montana.

Approved March 9, 1974

## HOUSE RESOLUTION NO. 69

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA APPOINTING A SELECT COMMITTEE TO RECOMMEND PROTECTIVE MEASURES FOR THE PAINTINGS IN THE CAPITOL.

WHEREAS, the paintings of Charles M. Russell, E. S. Paxson, and other artists are displayed in the legislative chambers of the Montana state capitol, and

WHEREAS, these works of art are a great cultural asset to the state, and have such value that a prudent owner would safeguard them from harm, and

WHEREAS, in recent years a number of works of art have been deliberately damaged by vandals or unstable persons, and works of art must in any event be protected from the ravages of time, and

WHEREAS, the Montana legislature should take responsibility for protecting the works of art in the capitol from vandalism, accidental damage, and deterioration.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Speaker of the House and President of the Senate appoint a select committee on the protection of works of art, consisting of two (2) members from each party, to investigate ways and means of safeguarding the works of art in the chamber and foyer of the House of Representatives, and of other works of art in the capitol, from harm or deterioration, and to report their findings and recommendations to the first session of the Forty-fourth Legislature.

Approved March 14, 1974

## HOUSE RESOLUTION NO. 70

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE FEDERAL POWER COMMISSION TO CONDUCT THE HEARINGS CONCERNING THE EXPANSION OF THE COLORADO INTERSTATE GAS COMPANY ACTIVITIES INTO THE BEARPAW MOUNTAIN AREA (DOCKET NO. CP 73-340) IN A CONVENIENT LOCATION IN MONTANA.

WHEREAS, the Colorado Interstate Gas Company is seeking the Federal Power Commission's approval to construct a gas pipeline and related facilities to remove gas from the Bearpaw Mountain gas fields, and

WHEREAS, such an activity is of great interest and concern to Montanans, and

WHEREAS, the hearings on Colorado Interstate Gas Company's request are presently scheduled to be held in Washington, D.C. and are thus effectively beyond the reach of many interested persons in Montana.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Federal Power Commission be requested to change the place of the hearing on the application of the Colorado Interstate Gas Company (Docket No. CP 73-340) from Washington, D.C. to some convenient location in Montana.

BE IT FURTHER RESOLVED, that the Chief Clerk of the House of Representatives send copies of this resolution to the Chairman of the Federal Power Commission and the members of the Montana Congressional Delegation.

Approved March 12, 1974

**HOUSE RESOLUTION NO. 71**

**A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING CONGRESS TO APPROVE H.R. 12260, CALLING FOR A SUSPENSION OF THE REQUIREMENT OF ANNUAL ASSESSMENT WORK ON MINING CLAIMS.**

WHEREAS, H.R. 12260 has been introduced in the United States Congress, calling for a suspension of the requirement of annual assessment work on mining claims, and

WHEREAS, H.R. 12260 states that Congress finds and declares that "it is in the public interest to conserve energy in every reasonable manner, and, further, that a significant savings in the expenditure of fuel could be realized by suspending the nominal improvement required on mining claims," and

WHEREAS, information furnished to the Montana Legislature indicates that a minimum of two million (2,000,000) gallons of diesel and gasoline fuel are used annually in completing the mining claims improvement requirement on the estimated forty-five thousand to fifty thousand (45,000 to 50,000) affected mining claims in the state of Montana alone, and

WHEREAS, the suspension of the annual assessment work would therefore contribute measurably to alleviating the energy shortage in Montana and the nation, and

WHEREAS, the suspension also would have a desirable effect on the environment by eliminating the practice of digging or bulldozing on claims simply to meet the federal requirement, and

WHEREAS, the suspension would not preclude a person from developing a claim if he discovers valuable mineral resources thereon, and

WHEREAS, Congress during World War II provided for a similar suspension in order to conserve energy.

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:**

That Congress is urged to approve H.R. 12260, suspending the requirement of annual assessment work on mining claims, in order to alleviate the energy shortage and also because of the environmental benefits of such a suspension.

**BE IT FURTHER RESOLVED,** that a copy of this resolution be sent to members of the Montana congressional delegation by the Clerk of the House of Representatives.

Approved March 14, 1974

**HOUSE RESOLUTION NO. 72**

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE UNITED STATES CONGRESS TO INVESTIGATE AND TAKE ACTION TO LIMIT THE OVERSEAS EXPORT OF NITROGEN AND PHOSPHATE FERTILIZERS PRODUCED IN THE UNITED STATES; INVENTORY AVAILABLE DOMESTIC FERTILIZER SUPPLIES AND DEMAND; IMPLEMENT AN EQUITABLE ALLOCATION PROGRAM OF EXISTING SUPPLIES TO STATES.

WHEREAS, it is the national policy to produce increased quantities of food supplies, and

WHEREAS, additional acreage and increased crop production are greatly needed to meet these policy goals, and

WHEREAS, Montana has essentially no fertilizer manufacturing within its borders, and

WHEREAS, Montana farmers and ranchers are faced with a thirty to forty percent (30-40%) deficit in required tonnage of fertilizer, and

WHEREAS, such a serious fertilizer shortage will result in a significant reduction of crop and livestock production.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the House of Representatives of the state of Montana makes known its views and concern for a more sufficient supply and a more equitable distribution of fertilizer to the states.

BE IT FURTHER RESOLVED, that the United States Congress investigate and take action to limit the overseas export of nitrogen and phosphate fertilizers produced in the United States.

BE IT FURTHER RESOLVED, that the United States Congress inventory available domestic fertilizer supplies and demand and implement an equitable allocation program of existing supplies to the states.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the President of the United States, the Montana congressional delegation, Governor Thomas Judge, and the Secretary of Agriculture, Earl J. Butz.

Approved March 15, 1974

**HOUSE RESOLUTION NO. 73**

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE DEPARTMENT OF INTERGOVERNMENTAL RELATIONS OR THE DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT, IF IT IS



CREATED, IN COOPERATION WITH THE DEPARTMENT OF REVENUE TO EXPLORE WAYS IN WHICH RURAL COUNTIES, SCHOOL DISTRICTS AND COMMUNITIES CAN BE ASSISTED IN MEETING THE INCREASE IN LOCAL GOVERNMENTAL SERVICES REQUIRED IN AREAS WHERE MAJOR INDUSTRIAL OR COMMERCIAL DEVELOPMENT IS TAKING PLACE OR IS ABOUT TO TAKE PLACE, AND TO OBTAIN SUCH FEDERAL AND OTHER FUNDS AS MAY BE AVAILABLE FOR SUCH A STUDY OR FOR ASSISTANCE; AND REQUESTING THE GOVERNOR TO ASSIST IN THE OBTAINING OF FEDERAL AND OTHER FUNDS.

WHEREAS, many rural counties, school districts and communities in Montana face a greatly increased demand for services because of rapid population increases caused by the location or proposed location of major industrial facilities or commercial developments within such rural counties, school districts and communities, and

WHEREAS, the social problems with which rural counties, school districts and communities must cope are greatly increased by this rapid increase in population, and

WHEREAS, the increase in demand for services and rise in social problems generally precede the completion of the industrial facility or commercial developments which has stimulated the population increase, so that the tax base is unable to meet the need for services which has been created, and

WHEREAS, this problem is increasing in Montana's rural areas at a rapid rate.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Department of Intergovernmental Relations or, if it is created by the present session of the Montana Legislature, the Department of Planning and Community Development, in cooperation with the Department of Revenue is requested to conduct a study

(1) to determine the economic and social impact of major industrial and commercial development in Montana, particularly in rural areas;

(2) to consider ways in which rural counties, school districts and communities can be assisted in meeting the increased need for governmental services including police and fire protection, schools, traffic and parking facilities, law enforcement services, social services, and other needed civic services;

(3) to consider ways in which industrial and commercial facilities can be made to assume a greater share of the burden of paying for community services the need for which is stimulated by their arrival;

(4) to consider ways in which the tax structure could be used to assist counties, school districts and communities in meeting the increased need for services.

BE IT FURTHER RESOLVED, that the departments involved in the

study report their findings, recommendations and proposals for legislation to the first session of the Forty-fourth Legislature no later than January 15, 1975.

BE IT FURTHER RESOLVED, that the departments involved in the study are requested to seek the assistance and shall receive the cooperation of any agency or department of the state which can assist in the study.

BE IT FURTHER RESOLVED, that the Department of Intergovernmental Relations or the Department of Planning and Community Development is requested to seek such federal or other funds and assistance as may be available, such as HUD funds, Section 701 planning funds, Rural Development Act Funds, Old West Commission funds, in order to meet the cost of this study and such additional funds as may be available to meet the extreme need for services exists in such areas.

BE IT FURTHER RESOLVED, that the Governor of the state of Montana is requested to use the full influence of his office in helping the state to obtain such federal or other funding as may be available to conduct this study or meet these needs.

Approved March 14, 1974

## HOUSE RESOLUTION NO. 74

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA CONCERNING DISPOSAL OF HAZARDOUS WASTES.

WHEREAS, the proper disposal of hazardous wastes will definitely affect public health and safety, and

WHEREAS, hazardous wastes have not been included in the present statutes of Title 69, chapter 40, and

WHEREAS, the Solid Waste Section of the Department of Health and Environmental Sciences is the responsible agency for the disposal of all wastes, with the exception of water-carried wastes.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Solid Waste Section of the Department of Health and Environmental Sciences shall be responsible for the disposal of hazardous wastes.

BE IT FURTHER RESOLVED, that the term "hazardous wastes" means any waste or combination of wastes which pose a substantial present or potential hazard to human health or living organisms because such wastes are nondegradable or persistent in nature, or because they can be biologically magnified, or because they can be lethal, or because they may otherwise cause or tend to cause detrimental cumulative effects.

Approved March 14, 1974

**HOUSE RESOLUTION NO. 75**

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA DIRECTING THE MONTANA DEPARTMENT OF AGRICULTURE AND THE DEPARTMENT OF LIVESTOCK IN COOPERATION WITH GENERAL FARM AND RANCH ORGANIZATIONS AND COMMODITY GROUPS TO PREPARE AND PROVIDE DATA AND INFORMATION TO THE PUBLIC CONCERNING THE RELATIONSHIP BETWEEN THE AMOUNT AGRICULTURE RECEIVED AND THE FINAL COST TO THE CONSUMERS.

WHEREAS, the public needs to know what the market basket costs are in relation to farm and ranch expenses in producing the food and fiber, and

WHEREAS, farm production expenses will again move up sharply in 1974, fueled by a dramatic rise in prices for petroleum products, fertilizers and farm machinery, and

WHEREAS, outlays for feed and seed will show another large increase due to higher prices and a need for more of these inputs, and

WHEREAS, continuing inflation will be a large factor, and a rise in total production expenses will be substantially above the 1972-1973 production expense estimates.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the House of Representatives of the state of Montana supports the efforts of the Departments of Agriculture and Livestock, general farm and ranch organizations and commodity groups to provide data and inform the public on prices paid and costs incurred to produce the food on farm and ranches in relation to the relative costs of the food in the market baskets.

BE IT FURTHER RESOLVED, that copies of this resolution be sent to the Governor, Secretary of State, general agricultural organizations and commodity groups, the Department of Livestock and the Department of Agriculture.

BE IT FURTHER RESOLVED, that additional funding for this effort be sought from outside sources, such as the Montana Committee on the Humanities, general farm and ranch organizations and commodity groups.

BE IT FURTHER RESOLVED, that the Secretary of State is requested to send copies of this resolution to the United States Senate and House of Representatives and the members of Montana's congressional delegation, and to the National Cost of Living Council.

Approved March 16, 1974

**HOUSE RESOLUTION NO. 76**

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE COMMITTEE ON PRIORITIES TO ASSIGN THE LEGISLATIVE COUNCIL TO STUDY CUSTOM COMBINING TAXATION AND FEES.

WHEREAS, neighboring states impose different taxes and fees for the entrance of custom combiners into their states, and

WHEREAS, there is lacking sufficient information on which to impose the proper taxes and fees for custom combiners entering the state of Montana, and

WHEREAS, it is necessary in imposing such taxes and fees that the interests of the state of Montana, resident and nonresident custom combiners, and the farmers of this state be protected.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Committee on Priorities assign to the appropriate standing committee a study of custom combining taxation fees in Montana.

BE IT FURTHER RESOLVED, that the study review the needs and interests of the state of Montana, resident and nonresident custom combiners, and the farmers of the state of Montana.

BE IT FURTHER RESOLVED, that the committee report its findings and recommendations to the first session of the Forty-fourth Legislature no later than January 15, 1975.

Approved March 16, 1974

**HOUSE RESOLUTION NO. 77**

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE LEGISLATIVE COUNCIL STAFF TO WORK WITH COUNTY ELECTION OFFICIALS IN PROVIDING THE UNITED STATES CENSUS BUREAU WITH INFORMATION AND ADVICE FOR THE CREATION OF CENSUS ENUMERATION DISTRICTS PRIOR TO EACH FEDERAL POPULATION CENSUS.

WHEREAS, the Montana Constitution requires that congressional and legislative districts be drawn on the basis of federal population census figures and that they consist of compact and contiguous territory, and

WHEREAS, federal population data are generally available in geographical units called enumeration districts which vary widely in population, violate election precinct lines, and consist of noncompact and non-contiguous territory, and

WHEREAS, the use of enumeration districts has posed many problems for the Montana Districting and Apportionment Commission and for some county clerks and recorders and county commissioners who must redraw their county election precincts to conform to single-member legislative districts, and

WHEREAS, the Legislative Council staff working in cooperation with county clerks and recorders and county commissioners has the material and expertise needed to provide meaningful recommendations for the creation of census enumeration districts which would facilitate legislative districting and election administration.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council staff is requested to work with county election officials in providing the United States Census Bureau with information and advice for the creation of census enumeration districts prior to each federal population census.

Approved March 14, 1974

## HOUSE RESOLUTION NO. 78

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE ARCHITECTURE AND ENGINEERING BUREAU OF THE DEPARTMENT OF ADMINISTRATION TO MAKE A STUDY OF THE PRESENT SYSTEM OF SELECTING ARCHITECTS, ENGINEERS, PLANNERS AND SIMILAR PROFESSIONALS FOR STATE CONTRACTS AND TO RECOMMEND CHANGES IN THE SYSTEM.

WHEREAS, public scandals have arisen in several states concerning the methods used to select architects and engineers for public jobs; and

WHEREAS, newspaper articles have appeared in Montana critical of the way in which architects and engineers are selected for public contracts in the state of Montana; and

WHEREAS, in hearings before the judiciary committee of the House of Representatives on House Bill No. 1061, during the 1974 session, most witnesses testifying agreed that there is an opportunity for undue political influence in the present system of selecting engineers, architects, and similar professionals and that this system needs to be changed;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Bureau of Architecture and Engineering of the Department of Administration is requested to conduct a study of the present system of selecting architects, landscape architects, professional engineers, registered land surveyors, regional or city planners, or environmental analysts for public contracts;

AND FURTHER THAT the bureau make recommendations to the first session of the 44th legislature concerning how this system of selection could be improved in order to:

- (1) Eliminate political influence
- (2) Assure that the state obtains the most qualified firms or individuals for state jobs; and
- (3) Assure that all qualified Montana firms and individuals are given a fair opportunity to participate in state jobs.

Approved March 15, 1974

## HOUSE RESOLUTION NO. 79

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE PRIORITIES COMMITTEE TO DIRECT THE APPROPRIATE STANDING COMMITTEE TO CONDUCT A STUDY OF THE PRESENT SYSTEM BY WHICH NON-BID CONTRACTS TO PERFORM PROFESSIONAL SERVICES FOR THE STATE OF MONTANA ARE ENTERED INTO AND TO MAKE RECOMMENDATIONS FOR IMPROVING THAT SYSTEM TO THE NEXT SESSION OF THE MONTANA LEGISLATURE.

WHEREAS, considerable public controversy has arisen in many states concerning the way in which non-bid professional service contracts for public jobs are entered into, and

WHEREAS, newspaper articles in Montana have raised questions about the way in which certain non-bid professional service contracts for public jobs are entered into in Montana, and

WHEREAS, in hearings before the Judiciary Committee of the House of Representatives on House Bill No. 1061 during the 1974 session, most witnesses testifying agreed that there is an opportunity for undue political influence in the present system of entering into non-bid professional service contracts for public jobs and that the system should be changed.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the priorities committee of the Montana Legislature is requested to direct the appropriate standing committee to conduct a study of the present system of entering into non-bid professional service contracts with the State of Montana;

AND FURTHER THAT, the committee make recommendations to the first session of the Forty-fourth Legislature concerning how this system of entering into non-bid professional service contracts could be improved in order to:

- (1) Eliminate political influence

(2) Assure that the state obtains the most qualified firms or individuals for state jobs, and

(3) Assure that all qualified Montana firms and individuals are given a fair opportunity to enter into non-bid contracts for professional services with the State of Montana.

Approved March 15, 1974

## HOUSE RESOLUTION NO. 80

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE DIVISION OF WORKMEN'S COMPENSATION TO CONDUCT A STUDY OF THE POSSIBILITY OF GRANTING SILICOSIS BENEFITS TO ALL SURVIVING SPOUSES OF DECEASED INDIVIDUALS WHO HAVE RECEIVED SILICOSIS BENEFITS.

WHEREAS, the state of Montana, grants through the division of workmen's compensation, to persons having silicosis, monthly silicosis payments, and

WHEREAS, a surviving spouse receives no payments after the death of a person receiving silicosis payments, and

WHEREAS, several individuals have lost their spouse due to silicosis and have not received any death benefit payments because of the death of their spouse, even though the death of a spouse has caused great financial harm and emotional well being to the surviving spouse.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the division of workmen's compensation of the Montana department of labor and industry conduct a study of the possibility of granting to all surviving spouses of deceased individuals who have received silicosis payments under Title 71, Chapter 10, R.C.M. 1947, the payments for silicosis that would have been received by those individuals had they lived. Recommendations and legislation implementing those recommendations shall be submitted to the Forty-fourth Legislature when it convenes in 1975, and

BE IT FURTHER RESOLVED, that a copy of this resolution be sent to the administrator of the division of workmen's compensation.

Approved March 16, 1974

## HOUSE RESOLUTION NO. 82

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE

STATE OF MONTANA REQUESTING THE DIVISION OF WORKMEN'S COMPENSATION OF THE DEPARTMENT OF LABOR AND INDUSTRY TO COMPILE A DETAILED STUDY OF THE NUMBER AND AGES OF UNMARRIED SPOUSES OF DECEASED SILICOTICS STILL RESIDING IN MONTANA, AND TO PREPARE A COST ESTIMATE FOR CONTINUING SILICOTIC BENEFITS TO THOSE SPOUSES.

WHEREAS, the legislature has been attempting to cope with the question of whether spouses of deceased silicotic recipients, who have not remarried should continue to receive those benefits, and

WHEREAS, there exists no comprehensive data relating to the number of such spouses, their ages, their residence, and the cost of continuing benefits to these persons, and

WHEREAS, the legislature needs such facts upon which to base enlightened decisions.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Division of Workmen's Compensation of the Department of Labor and Industry is requested to compile a detailed study of the number and ages of unmarried spouses of deceased silicotics still residing in Montana and to prepare a cost estimate for continuing silicotic benefits to those spouses.

BE IT FURTHER RESOLVED, that a copy of this resolution be sent to the administrator of the Division of Workmen's Compensation.

Approved March 16, 1974

## HOUSE RESOLUTION NO. 83

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE LEGISLATIVE COUNCIL TO CONDUCT A STUDY OF THE RISING COSTS OF EDUCATION, MOST PARTICULARLY SCHOOL ADMINISTRATION COSTS AND WHAT EFFECT THE STATES ACCREDITATION STANDARDS HAVE ON SUCH RISING COSTS.

WHEREAS, the total public school enrollment increased by only 4.3% from 1963-65 to 1973-75 and has actually declined at the elementary level in recent years, but the general fund budget per student has increased by 119% during the same time period, and

WHEREAS, the number of teachers increased by 19% but the number of school administrators increased by 59%, and

WHEREAS, the total teacher salaries increased by 110% but the total administrator salaries increased by 200%, and



WHEREAS, the teacher salary proportion of the general fund budget of the school districts actually *decreased* by 11% but the administrators salary proportion of the general fund budget *increased* by 33%.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That a study be undertaken by the Legislative Council in order to determine the reasons for the rising costs of public elementary and secondary education in the state of Montana with emphasis on the increasing costs of administration compared to instruction and what effect the state's standards for accreditation play in such rising costs of education.

Approved March 16, 1974

### HOUSE RESOLUTION NO. 84

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE COMMITTEE ON PRIORITIES TO ASSIGN THE APPROPRIATE STANDING COMMITTEES TO STUDY THE TAXATION OF NEW INDUSTRIAL FACILITIES.

WHEREAS, many taxing jurisdictions seek to attract investment in new industrial plants by providing special reductions in the tax burden on such plants for several years, and

WHEREAS, the state of Montana has a tax incentive for new industrial investment in Class Seven of section 84-301, R.C.M. 1947, but the incentive is limited to certain types of industry and excludes other types which ought to be encouraged to locate in Montana, and

WHEREAS, the legislature should review the application of the Class Seven tax incentive in the context of a policy to strengthen and diversify the economy of Montana by attracting investment in sectors such as light, non-polluting manufacturing.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Committee on Priorities is requested to assign the appropriate standing committees to study, with the assistance of the Department of Revenue, the taxation of new industrial facilities, reviewing the administration and application of Class Seven, section 84-301, to determine its effectiveness as an incentive for desirable economic growth, and to report the resulting findings and recommendations to the first session of the Forty-fourth Legislature.

Approved March 16, 1974

### HOUSE RESOLUTION NO. 85

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE

STATE OF MONTANA REQUESTING THE COMMITTEE ON PRIORITIES TO ASSIGN THE APPROPRIATE STANDING COMMITTEES TO STUDY THE LIQUOR LAWS FOR THE PURPOSE OF GENERALLY UPDATING AND REVISING SUCH LAWS.

WHEREAS, the provisions concerning alcoholic beverages in Title 4 of the Revised Codes of Montana, 1947, were enacted, for the most part, in 1933 and have not been revised in forty-one (41) years, and

WHEREAS, a number of these provisions are obsolete, archaic, or presently serve no useful social purpose, and

WHEREAS, a legislative study of the liquor laws, which would make recommendations for the general updating and revision of such laws while not making recommendations for any fundamental change in the policies underlying the laws, would be useful to the legislature and the people of Montana.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Committee on Priorities is requested to assign the appropriate standing committees to study the statutory provisions governing the sale and consumption of alcoholic beverages, to recommend such revisions and deletions in these laws as is needed to bring the laws up to date and to remove provisions which are found to be archaic or obsolete, while making no recommendations as to the basic policies underlying the liquor laws, and to report its findings and recommendations to the first session of the Forty-fourth Legislature.

Approved March 16, 1974

## HOUSE RESOLUTION NO. 86

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE DEPARTMENT OF INTERGOVERNMENTAL RELATIONS TO STUDY THE FEASIBILITY OF REDUCING MASS TRANSIT FARES FOR THE ELDERLY AND PERSONS ON LOW INCOMES.

WHEREAS, persons on low income, the elderly and others, are most dependent on mass transit facilities for their transportation needs.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Department of Intergovernmental Relations is requested to study the feasibility of reducing the fares paid by elderly persons and low-income persons on mass transit facilities in Montana and to report its findings and recommendations to the first session of the Forty-fourth Legislature.

Approved March 16, 1974

**HOUSE RESOLUTION NO. 87**

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE PRIORITIES COMMITTEE TO DIRECT THE APPROPRIATE STANDING COMMITTEE TO CONDUCT A STUDY OF ARTICLE 2, SECTIONS 8, 9, AND 10 (RIGHT TO PARTICIPATE, RIGHT TO KNOW, AND RIGHT OF PRIVACY) AND THE RESPECTIVE BILLS PRESENTED IN THE 1974 SESSION FOR IMPLEMENTING SAID PROVISIONS AND TO MAKE RECOMMENDATIONS FOR PRESENTATION TO THE NEXT SESSION OF THE MONTANA LEGISLATURE.

WHEREAS, Article 2, section 8 of the new Montana Constitution provides for the Right to Participate, and

WHEREAS, Article 2, section 9 of the new Montana Constitution provides for the Right to Know, and

WHEREAS, Article 2, section 10 of the new Montana Constitution provides for the Right of Privacy, and

WHEREAS, the comments of the constitutional convention drafters indicated that legislation was contemplated for full implementation of both of these sections of the new Montana Constitution, and

WHEREAS, House Bill 719 was introduced in the 1974 session for the purpose of implementing by legislation the section relating to the Right to Participation, and

WHEREAS, House Bills 720 and 721 were introduced in the 1974 session for the purpose of implementing by legislation the section relating to the Right to Know, and

WHEREAS, House Bill 1024 was introduced in the 1974 session for the purpose of implementing the section on the Right of Privacy, and

WHEREAS, all four bills have now failed to pass with the understanding that further study should be made of these bills and of both subjects so that legislation on these matters can be reintroduced into the next session of the legislature to be convened in January of 1975.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the priorities committee of the Montana Legislature is requested to direct the appropriate standing committee to conduct a study of Article 2, section 8 (Right to Participate), section 9 (Right to Know), and Article 2, section 10 (Right of Privacy) and to further conduct a study of the four bills that were introduced in the 1974 session (House Bill No. 719, House Bill No. 720, House Bill No. 721, House Bill No. 1024);

AND FURTHER THAT, the committee make recommendations and propose legislation for introduction into the first session of the forty-fourth Legislature concerning these subjects.

Approved March 16, 1974

**HOUSE RESOLUTION NO. 88**

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA INFORMING THE MONTANA CONGRESSIONAL DELEGATION AND APPROPRIATE FEDERAL AGENCIES, OF THE INTEREST OF MONTANA IN LONG-RANGE COMPREHENSIVE PLANNING FOR THE DEVELOPMENT OF ENERGY AND OTHER RESOURCES.

WHEREAS, Montana is entering into a period of unprecedented development of its natural resources, which will have a far reaching influence upon the quality of life in the state, and in the surrounding region, and

WHEREAS, there is a need to develop and maintain mechanisms to assure the development of coal and other natural resources in a proper, environmentally sound, and socially compatible manner, and

WHEREAS, the gathering and coordination of social, economic, and environmental information, on a regional basis, is essential for intelligent planning and development, and must be undertaken, immediately in advance of large scale development.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Federal Energy Commission be requested and urged to initiate regional planning programs which will determine and identify the social, economic, and environmental impact of energy and resource development in Montana and adjacent states.

BE IT FURTHER RESOLVED, that a copy of this resolution be sent to the Montana Congressional delegation soliciting their support for such regional research proposals.

Approved March 16, 1974

**HOUSE RESOLUTION NO. 89**

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE COMMITTEE ON PRIORITIES TO ASSIGN TO THE APPROPRIATE STANDING COMMITTEE A STUDY OF THE PROBLEMS RELATING TO STATE INSTITUTIONS AND THEIR EMPLOYEES AND HAVE IT REPORT ITS FINDINGS TO THE FIRST REGULAR SESSION OF THE FORTY-FOURTH LEGISLATURE.

WHEREAS, the problem of employing and retaining employees in state institutions has been and continues to be of paramount significance to the legislature, and

WHEREAS, the salaries of most of these employees have been and continue to be at or near the poverty level according to federal standards, and

WHEREAS, institutional employment is unique for a number of reasons a few of which are:

(1) Employees are required to provide care to the mentally ill, retarded and socially problematical;

(2) Employees are required to travel much farther from their residences to their employment than most other state employees because of the isolation of institutions;

(3) Adequate housing is not available on or adjacent to state land;

(4) Physical working environment is less than desirable in many instances, and

WHEREAS, the proper care and treatment of residents of state institutions requires dedicated staff with highly developed skills beyond those which have been recognized by any legislature to date.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Committee on Priorities is requested to assign to the appropriate standing committee a study of the problems relating to state institutions and their employees.

BE IT FURTHER RESOLVED, that this study be done in conjunction with the Department of Institutions.

BE IT FURTHER RESOLVED, that the standing committee report its findings and recommendations, along with any proposed legislation, to the first regular session of the Forty-fourth Legislature.

Approved March 16, 1974

## HOUSE RESOLUTION NO. 91

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING A JOINT STUDY TO DETERMINE METHODS OF INCREASING EFFICIENCY IN THE OPERATION OF THE LEGISLATURE.

WHEREAS, the operation of the legislature is exceedingly complex and interconnected and requires large sums of money for operation and capital expenditures, and

WHEREAS, the efficient operation of the legislature requires staffing in many areas of administration and research, and

WHEREAS, the legislature is often highly critical of efficiency and waste in all other operations of state government, and

WHEREAS, the legislature should not engage in such inefficient activities in conducting its own operation.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the legislature, through its various agencies, shall assess and review all aspects of legislative operations and expenditures, including analyses of work flows and work loads.

BE IT FURTHER RESOLVED, that in order to implement this review, the Joint Legislative Administration Committee, the Legislative Business Manager, the Legislative Council and the Legislative Auditor are requested to coordinate efforts to complete this review and study.

BE IT FURTHER RESOLVED, that the Department of Administration is requested to provide such expertise in administrative matters as the foregoing legislative agencies may find necessary.

BE IT FURTHER RESOLVED, that the foregoing study and analysis result in recommendations for improvement of the entire legislative operation to be submitted to the first regular session of the Forty-fourth Legislature, with a view toward efficiency and reduced cost to the taxpayers.

BE IT FURTHER RESOLVED, that a copy of this resolution be forwarded to the chairman of the Joint Legislative Administration Committee, the Legislative Business Manager, the Executive Director of the Legislative Council, the Legislative Auditor and the Director of the Department of Administration.

Approved March 16, 1974

## HOUSE RESOLUTION NO. 92

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE COMMITTEE ON PRIORITIES TO CONSIDER REQUESTING A JOINT STANDING COMMITTEE BE ASSIGNED THE STUDY OF THE PROBLEMS INVOLVED IN EXISTING MENTAL COMMITMENT PROCEDURES IN MONTANA, AND REPORT ITS FINDINGS TO THE FIRST SESSION OF THE FORTY-FOURTH LEGISLATURE WITH DRAFT LEGISLATION.

WHEREAS, mental health care and treatment are of great importance to the public health and welfare of the citizens of Montana; and

WHEREAS, mental commitment procedures involve both serious health care and legal considerations; and

WHEREAS, legislation concerning itself with the problems of mental commitment will have profound impact on the state's judicial system and a wide range of state and community mental health facilities.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Committee of Priorities is requested to consider and assign an appropriate joint standing committee to study the problems involved with mental commitment procedures in Montana.

BE IT FURTHER RESOLVED, that a report and draft legislation be prepared and submitted by the assigned committee to the first session of the Forty-fourth Legislature.

Approved March 16, 1974

### HOUSE RESOLUTION NO. 93

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA EXPRESSING THE CONCERN OF THE HOUSE OF REPRESENTATIVES WITH THE PROBLEM OF DEVIŠING AN ADEQUATE AND EQUITABLE TAXATION PROGRAM FOR THE TAXATION ON COAL AND OTHER FOSSIL FUELS; REQUESTING THE COMMITTEE ON PRIORITIES TO DIRECT THE APPROPRIATE STANDING COMMITTEE TO CONDUCT A STUDY OF THE TAXATION OF THE COAL AND OTHER FOSSIL FUEL INDUSTRIES AND TO MAKE RECOMMENDATIONS TO THE NEXT SESSION OF THE MONTANA LEGISLATURE.

WHEREAS, the development of coal resources and other fossil fuels is an increasingly important industry in Montana, and

WHEREAS, it is essential that the state of Montana devise a system of taxation of this industry which is both equitable and adequate to assure that the state will share in the benefits of the development of these essential resources, and

WHEREAS, the present system of taxation of the coal and other fossil fuel industries is not consistent or coordinated, and

WHEREAS, the problem of taxation of the coal and other fossil fuel industries is too complicated and too important to be resolved by hasty study or deliberation.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the House of Representatives of the state of Montana declares its deep concern that a fair and adequate system of taxation be developed for the coal mining and other fossil fuel industries in Montana.

BE IT FURTHER RESOLVED, that the House of Representatives endorses the concept of taxation of the coal mining and other fossil fuel industries based on a percentage of the delivered price of fuels mined or otherwise extracted within the state.

BE IT FURTHER RESOLVED, that the Committee on Priorities is requested to direct the appropriate standing committee to conduct a study of the present structure of taxation of the coal mining and other fossil fuel industries in Montana.

BE IT FURTHER RESOLVED, that this study evaluate the present net proceeds tax, resource indemnity trust tax, strip coal mines license tax, corporate income tax, the tax on equipment, machinery and real estate, the tax on the right to prospect, and any other taxes which affect the fossil fuel industries and determine whether these taxes overlap or conflict with each other.

BE IT FURTHER RESOLVED, that this study explore ways in which taxation of the coal mining and other fossil fuel industries can be based on a percentage of the delivered price of the coal and other fossil fuels mined or otherwise extracted in Montana.

BE IT FURTHER RESOLVED, that the standing committee make full use of the information and expertise available to it through the various agencies of the state government, through the federal government, and from the coal mining and other fossil fuel industries themselves.

BE IT FURTHER RESOLVED, that the standing committee report its findings and proposals for legislation to the next session of the Montana legislature no later than January 15, 1975.

Approved March 16, 1974

## SENATE RESOLUTION NO. 40

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA REQUESTING INDUSTRIES ENGAGED IN STRIP MINING, THE CONVERSION OF COAL INTO ENERGY IN ELECTRICAL AND GASIFICATION PLANTS, AND IN THE SHIPMENT OF COAL TO GIVE PREFERENCE TO MONTANA CITIZENS IN THEIR EMPLOYMENT PRACTICES.

WHEREAS, the industries engaged in strip mining, the conversion of coal into energy in electrical and gasification plants, and in the shipment of coal are benefiting from the use of Montana's valuable and irreplaceable natural resources, and

WHEREAS, these industries promise to bring economic prosperity to eastern Montana, and

WHEREAS, Montana has an unemployment ratio in excess of nine percent (9%) and ranks fifth in the nation in unemployment.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the industries engaged in strip mining, the conversion of coal into energy in electrical and gasification plants, and in the transportation of coal are urged to give preference to Montana citizens in their employment practices.

Approved February 8, 1974



**SENATE RESOLUTION NO. 44**

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA ASKING THE CORPS OF ENGINEERS TO CONSIDER CONSTRUCTING NEW FACILITIES AND REPAIRING OLD FACILITIES AT ROCK CREEK STATE PARK AND BEAR CREEK PARK ON FORT PECK LAKE.

WHEREAS, recreation is becoming increasingly important to the economic and social health and well-being of Montanans; and

WHEREAS, recreational facilities on the eastern side of Fort Peck Lake, especially Rock Creek State Park and Bear Creek Park, are run down and in need of repairs; and

WHEREAS, the boat ramp at Rock Creek State Park is deteriorating and Bear Creek Park does not have a boat ramp; and

WHEREAS, the road to Bear Creek Park is a mere trail which is accessible only to trucks and then only when there has been no rain; and

WHEREAS, both parks have few trees; and

WHEREAS, the toilets and camping shelters of both parks need to be either repaired or replaced.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the United States Corps of Engineers be asked to consider building a boat ramp and a gravel road at Bear Creek Park, and planting trees and replacing or repairing the toilets and camping shelters at both Bear Creek Park and Rock Creek State Park as soon as possible.

BE IT FURTHER RESOLVED, that the secretary of the senate forward copies of this resolution to the United States Corps of Engineers at Fort Peck Lake, Governor Thomas L. Judge, United States Senators Mike Mansfield and Lee Metcalf, and United States Representatives John Melcher and Richard Shoup.

Approved February 8, 1974

**SENATE RESOLUTION NO. 46**

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA TO ADOPT RULES TO GOVERN ITS PROCEEDINGS IN ADDITION TO THE JOINT RULES.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the following rules are adopted:

Senate Rules

CHAPTER 1

Presiding Officer — Decorum, Order and Debate

S1-1. At the beginning of each biennium the senate shall choose a president from its membership who shall be the presiding officer. In case of the absence or disqualification of the president, the president pro tempore of the senate shall perform the duties of the president until the vacancy is filled or the disability removed.

S1-2. The senate shall, at the beginning and close of each regular session, and at such other times as may be necessary, elect one of its members president pro tempore. The senate shall choose its other officers, and shall judge of the elections, returns, and qualifications of its members.

S1-3. The president and president pro tempore, when acting as presiding officer of the senate, shall vote as any other member of the senate.

S1-4. The president may name a senator to perform the duties of the chair, when the president pro tempore is not present in the senate chamber. The senator who is so named is vested during such time with all the powers of the president; but he does not lose the right to vote on any question while presiding.

S1-5. No senator shall speak more than twice on any one motion or question without unanimous consent of the senate, unless he has introduced or proposed the motion or question under debate, in which case he may speak twice and also close the debate. However, a senator who has spoken shall not speak again on the same motion or question to the exclusion of a senator who has not spoken.

S1-6. On order of business No. 8 — In addition to other methods a recorded vote may be made in the following manner: the chair may call for a voice vote to accept or reject a question. If the vote is other than unanimous, the chair may ask that the lesser number on the question indicate their vote by standing. The secretary will then record the vote of those standing. The chair may then rule that unless excused those not standing and present have voted on the prevailing side of the question and that their vote be recorded as such. If there was a unanimous voice vote, all those present will be recorded as having voted for the question.

S1-7. Only the following persons may be admitted to the floor of the senate during sessions: legislators, legislative officers and employees whose presence is necessary for the conduct of the business of the session, accredited members of the press, radio and television, former legislators. The rules committee shall be allowed to make exceptions for visiting dignitaries.

CHAPTER 4

Order of Business

S4-1. On order of business No. 2 (reports of standing committees), no debate shall be had on any report unless a minority report has been sub-

mitted. Any member seeking a reconsideration of the Senate's action on the adoption of a committee report shall do so on order of business No. 6 by motion to reconsider. Any member may make such motion and need not have voted on the prevailing side. This rule shall apply notwithstanding any joint rule to the contrary.

#### CHAPTER 5

##### Motions

S5-1. All proper motions on second reading are debatable.

#### CHAPTER 6

##### Bills and Resolutions

S6-1. Any bill or resolution may be introduced during a special session, provided however, that the Rules Committee shall determine which bills or resolutions shall be considered during a special session, including bills or resolutions carried over from previous sessions. This rule shall apply to both house and senate bills or resolutions.

#### CHAPTER 7

##### Committees

S7-1. The senate shall elect a committee on committees consisting of 3 members. The committee on committees, with the approval of the senate, shall appoint standing and select committees of the senate, and senate membership on joint committees except conference committees. The president shall appoint all conference committees with the advice of the majority and minority floor leaders. The senate may change the membership of any committee on one day's notice.

The standing committees of the senate are as follows:

1. Agriculture, Livestock and Irrigation
2. Bills and Journal
3. Business and Industry
4. Constitution, Elections and Federal Relations
5. Education
6. Finance and Claims
7. Fish and Game
8. Highways and Transportation
9. Judiciary
10. Labor and Employment Relations
11. Legislative Administration
12. Local Government
13. Natural Resources
14. Public Health, Welfare and Safety

15. Rules
16. State Administration
17. Taxation

S7-2. The majority leader shall be an ex-officio member of all committees in order to establish a quorum.

## CHAPTER 8

### Rules and Journal

S8-1. (1) A motion to amend or adopt a rule of the senate shall be referred to the committee on rules without debate. A rule of the senate may only be amended or adopted with the concurrence of a majority of the senate and after one day's notice.

(2) A rule may be suspended temporarily by a two-thirds vote.

S8-2. Mason's Manual of Legislative Procedure governs the proceedings of the senate in all cases not covered by these rules.

## CHAPTER 10

### Nominations From The Governor

S10-1. The governor shall nominate, and by and with the consent of the senate, appoint all officers whose offices are established by the constitution or which may be created by law, and whose appointment or election is not otherwise provided for. If during a recess of the senate a vacancy occurs in any such office, the governor shall appoint some fit person to discharge the duties thereof until the next meeting of the senate, when he shall nominate some person to fill such office.

S10-2. When nominations are sent by the governor to the senate for confirmation, they shall not be acted on before the next succeeding legislative day, except nominations sent by the governor on the last legislative day of the session, which shall be acted upon that day.

Approved January 11, 1974

## SENATE RESOLUTION NO. 47

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA  
ENCOURAGING THE WALLY BYAM CARAVAN CLUB INTERNATIONAL  
TO VISIT MONTANA WHENEVER POSSIBLE.

WHEREAS, the Wally Byam Caravan Club International which toured the state of Montana during the summer of 1973 was comprised of such gracious and friendly people; and

WHEREAS, those people shared their enthusiasm and generosity with the people of Montana by inviting them to participate in their many forms of entertainment; and

WHEREAS, those people displayed their respect for the native beauty

and clean environment of this state by always leaving their campsites in perfect condition; and

WHEREAS, Montana appreciates and encourages tourists to visit this state.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Wally Byam Caravan Club International is always welcome in Montana and is invited to return to this state whenever possible.

BE IT FURTHER RESOLVED, that a copy of this resolution be sent to the Wally Byam Caravan Club International.

Approved February 8, 1974

### SENATE RESOLUTION NO. 49

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA REQUESTING THE GOVERNOR OF MONTANA TO APPOINT A COMMITTEE TO INVESTIGATE AND STUDY "THE PROFESSIONAL NEGOTIATIONS ACT FOR TEACHERS" AND OTHER LABOR-MANAGEMENT STATUTES RELATED TO PUBLIC SCHOOL EDUCATION.

WHEREAS, several legislative bills to amend Sections 75-6115 through 75-6128, R.C.M. 1947, entitled "The Professional Negotiations Act for Teachers" and relating to other labor-management relations between school districts and teachers, such as teacher tenure, teacher contracts, personnel appeals, bargaining agents, teacher discharge, school board policy, binding arbitration, bargaining impasse, have been introduced in the second session of the 43rd Montana legislative assembly, and

WHEREAS, the several legislative bills are presented without the benefit of in-depth review by interim study committees of the legislature, and

WHEREAS, there are issues raised in the bills which require in-depth study to insure high quality education for the youth of Montana,

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Superintendent of Public Instruction be requested to work with twelve (12) other persons appointed by the governor of Montana as a committee to investigate and study "The Professional Negotiations Act for Teachers" and other labor-management statutes related to public school education and to report the results of such investigation and study to the first session of the 44th Montana legislative assembly, and

BE IT FURTHER RESOLVED, that the twelve (12) appointees be selected by the governor as follows: One from the membership of the Montana senate, one from the membership of the Montana house of representatives, two members from the board of public education, and two

members from a list of four nominees presented by the board of directors of each of the following: Montana association of school administrators, Montana education association, Montana federation of teachers, and Montana school boards association. The superintendent of public instruction or her designee shall serve as the chairperson for the committee. The members of the committee shall serve without compensation, and

BE IT FURTHER RESOLVED, that the committee may request and shall receive the services of the legislative council if it so desires in the performance of its investigation and study, and

BE IT FURTHER RESOLVED, that a copy of this resolution be mailed to the superintendent of public instruction, the board of public education and the boards of directors of the Montana association of school administrators, Montana education association, Montana federation of teachers and the Montana school boards association, requesting the names of their nominees as aforesaid be delivered to the governor of Montana no later than April 1, 1974.

Approved February 11, 1974

## SENATE RESOLUTION NO. 50

### A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA REQUESTING HOUSING AND RELATED CARE FACILITIES FOR THE ELDERLY.

WHEREAS, we have carefully studied the President's housing message of September 19, 1973, and

WHEREAS, our dedication to the purposes of this organization requires that we formulate and communicate our views and positions vis-a-vis Federal housing policies and programs as they relate to the housing and related needs of the low-moderate income elderly.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the State of Montana representing housing and related care facilities for the elderly, makes known its views and urges actions as follows:

1. The proposal for direct housing assistance payments to lower income individuals and families has merit and we particularly approve the President's stated intention of initially implementing this program to assist the lower income elderly. However, we support fully funding and implementation of the direct housing assistance payment plan for the elderly immediately rather than delaying it until 1975.

2. We join with all other knowledgeable authorities in giving stated recognition to the fact that the housing and related needs of the elderly are complex and manifold and, therefore, no single program can meet the needs of all of the low-moderate income elderly . . . since there are vari-

ous groups of the elderly, each of which has specific and unique needs. For example, an elderly couple in their early-to-mid sixties who enjoy good health and moderate income obviously do not have the same needs as single and widowed females in their late seventies and who often have incomes barely at subsistence level. Stated more simply, the most needful group of the elderly need not only housing but the security, companionship and independence that can only be provided by specialized housing and related care facilities.

3. These specialized facilities represented are effectively responding to the special housing and related needs of that segment of our elderly population for whom a direct housing assistance payment would not solve their needs and desires for physical, emotional and financial security combined with the need and desire for companionship, social recreational and constructive activity in a non-institutional atmosphere which enhances dignity and independence.

4. By far the most successful and economical Federal housing assistance program for the elderly was the Section 202 senior housing loan program.

5. The benefits of 202 type housing to a community have had profound impact in upgrading neighborhoods and in providing a ready talent pool to staff volunteer community programs.

6. We strongly recommend re-institution of the 202 type approach as a primary vehicle for housing the elderly. Furthermore, we heartily recommend that a re-instituted 202 type program be made even more flexible than the old program, in the sense of allowing for a broad spectrum of devices for meeting the total needs — housing, health, social, recreational, nutritional — of our aging people.

BE IT FURTHER RESOLVED, that copies of this resolution be transmitted by the Secretary of the Senate of the State of Montana to the Honorable Richard M. Nixon, President of the United States, Honorable Gerald Ford, Vice President of the United States, Honorable Mike Mansfield, Majority Floor Leader of the United States Senate, Honorable Lee Metcalf, United States Senate, Congressman Richard S. Shoup, House of Representatives, Congressman John W. Melcher, House of Representatives.

Approved March 1, 1974

## SENATE RESOLUTION NO. 51

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA RECOMMENDING THE APPOINTMENT OF THE EMPLOYMENT SECURITY DIVISION, MONTANA STATE DEPARTMENT OF LABOR AND INDUSTRY BY THE GOVERNOR OF THE STATE OF MONTANA FOR THE PURPOSE OF ADMINISTERING THE COMPREHENSIVE EMPLOYMENT AND TRAINING ACT OF 1973.

WHEREAS, the President on December 28, 1973, signed into law the

Comprehensive Employment and Training Act of 1973, which act makes federal monies available to state and local governments for the purpose of providing a wide array of manpower services to citizens; and,

WHEREAS, the Employment Security Division, Montana State Department of Labor and Industry has acquired considerable expertise in rendering service to the public under the Wagner-Peyser Act, the Veterans Readjustment Act, the work incentive program, the food stamp program, the unemployment insurance laws; plus many other federally assisted manpower training and support programs; and,

WHEREAS, the Employment Security Division has 23 strategically located local offices within the state and the necessary delivery system functioning and in place; and,

WHEREAS, the Employment Security Division has a past exemplary record in program accomplishment, referrals, job development and placement to date under the aegis of categorical manpower programs; and,

WHEREAS, this body desires to avoid a duplication of services, and excessive administrative costs; and,

WHEREAS, the Governor of the State of Montana as the prime sponsor in full control of the Comprehensive Employment and Training Act of 1973, has the authority to name an administering agency.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Governor of the State of Montana consider naming the Employment Security Division of the Montana State Department of Labor and Industry as an administering agency for the Comprehensive Employment and Training Act of 1973.

Approved March 8, 1974

## SENATE RESOLUTION NO. 52

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA RELATIVE TO STUDYING THE POSSIBILITY OF CONSTRUCTING AN AREAWIDE SEWAGE TREATMENT SYSTEM FOR ALL THE COMMUNITIES SURROUNDING FLATHEAD LAKE, REQUESTING THE GOVERNOR TO TAKE CERTAIN ACTIONS UNDER THE FEDERAL WATER QUALITY ACT OF 1972, REQUESTING THE COMMITTEE ON PRIORITIES TO ASSIGN THE APPROPRIATE STANDING COMMITTEE TO STUDY STATUTORY PROVISIONS RELATIVE TO REGIONAL SEWAGE TREATMENT SYSTEMS, AND REQUESTING THAT THE AFFECTED UNITS OF LOCAL GOVERNMENT BE CONSULTED AND PARTICIPATE IN SUCH STUDIES.

WHEREAS, the introduction of sewage into lakes and lacustrine ecosystems frequently hastens the biological aging of such systems, caus-



ing eutrophication and other forms of interference with beneficial water uses; and

WHEREAS, the waters of Flathead Lake, long celebrated for their clarity, are highly vulnerable to eutrophication and other pollution problems arising from the overloading of sewerage and subsurface disposal systems; and such problems have begun to appear in the lake; and

WHEREAS, considering that Flathead Lake is the largest body of fresh water west of the Mississippi River, and the fame of its scenic beauty is widespread, there are local, state, and national interests in the biological integrity of the lake; and

WHEREAS, the Congress has declared a national policy for the protection and restoration of the biological integrity of the nation's waters in the Federal Water Pollution Control Act of 1972, including programs in section 104(h) of the act for developing and demonstrating new or improved pollution control methods in lakes, and in section 208 for areawide waste treatment management plans; and

WHEREAS, an areawide waste treatment management plan could solve many of the water quality problems now appearing in Flathead Lake, and the local, state, and national interests require that steps be taken to preserve the option of developing such an areawide system; and

WHEREAS, regulations promulgated by the Environmental Protection Agency on September 14, 1973, provide a procedure whereby a governor may request the designation of an area for areawide waste treatment planning and facility development, or may reserve an area for future requested designation, but either such action must be taken by March 13, 1974, according to the rule published as 40 CFR 126.15; and

WHEREAS, the Flathead Lake area would meet the federal criteria for designating an areawide waste treatment management region, and the units of local government have apparent authority to cooperate with one another on regional sewage treatment works under section 16-4401, and to cooperate across county lines on regional sewers under section 16-4502, but further study of the applicable statutes would clarify this authority.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the governor is requested to take appropriate action, before March 13, 1974, pursuant to the Environmental Protection Agency regulation published as 40 CFR 126.14 to designate the Flathead Lake area for areawide waste treatment management programs, or to preserve the option of making such designation in the future.

BE IT FURTHER RESOLVED, that the committee on priorities is requested to assign the appropriate standing committee to study the question of whether units of local government possess authority to cooperate on the construction of areawide waste treatment facilities serving two or more counties, to conduct such study in cooperation with the affected units of local governments and hold hearings in the region, and to recommend any statutory changes found necessary to the first session of the forty-fourth legislature.

BE IT FURTHER RESOLVED, that the governing bodies of the counties of Flathead and Lake and the cities and towns in those counties which lie within the drainage basin of Flathead Lake, are each requested to study the feasibility of joining in an areawide waste treatment facility, and to participate in the study made by the Legislative Council of the legal authority for such project, communicating to the legislature in this report their views on the feasibility of the proposal.

BE IT FURTHER RESOLVED, that the Secretary of the Senate send copies of this resolution to the Governor, the Director of Health and Environmental Sciences, the members of the Environmental Quality Council, and the Honorable Russell E. Train, Administrator of the United States Environmental Protection Agency.

Approved February 14, 1974

## SENATE RESOLUTION NO. 54

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA RECOMMENDING THAT THE FARMERS HOME ADMINISTRATION GIVE FAVORABLE CONSIDERATION FOR FUNDING OF INDUSTRY ON THE FORT PECK INDIAN RESERVATION.

WHEREAS, unemployment on the Fort Peck Indian Reservation is extremely high, and

WHEREAS, it has been proven by past industry that Indians on the Fort Peck Reservation are good loyal workers, and

WHEREAS, due to cold weather, cost for heating is higher than most areas in Montana, and

WHEREAS, a grant from Farmers Home Administration is now being requested for implementing industry, and

WHEREAS, the grant requested is for the establishment of a plant for manufacture of camouflage netting, and

WHEREAS, this industry is clean and non-polluting, and

WHEREAS, sufficient space is available for housing this industry, and

WHEREAS, no individuals, families, business or farms will be displaced by the project.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Farmers Home Administration give favorable consideration to the proposed project funding as applied for by the Fort Peck Tribal Board.

BE IT FURTHER RESOLVED, that the secretary of the senate forward copies of this resolution to Richard Smiley, State Director of the Farmers Home Administration, Bozeman, Farmers Home Administration, Wolf

Point, Governor Thomas L. Judge, the Honorable Mike Mansfield, Honorable Lee Metcalf, U. S. Senators, the Honorable John Melcher and the Honorable Richard Shoup, U. S. Congressmen.

Approved February 22, 1974

## **SENATE RESOLUTION NO. 55**

**A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA TRANSMITTING RECOMMENDATIONS TO THE DISTRICTING AND APPORTIONMENT COMMISSION REGARDING ITS PLAN AS REQUIRED BY ARTICLE V, SECTION 14, OF THE MONTANA CONSTITUTION.**

WHEREAS, a districting and apportionment commission was appointed and has prepared and presented a plan for redistricting and reapportioning the state into legislative and congressional districts as required by Article V, section 14 of the Montana constitution, and

WHEREAS, the Senate has studied the plan submitted to it and has considered several recommendations regarding the plan, and

WHEREAS, the Senate must return the plan to the commission with its recommendations in accordance with the Montana constitution, and

WHEREAS, the Senate chooses to return recommendations in the form of a simple resolution.

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:**

That the Senate recommends that the districting and apportionment commission make such minor changes in the plan proposed by county clerks and recorders as are necessary to facilitate election administration.

**BE IT FURTHER RESOLVED**, that the Senate recommends that the districting and apportionment commission reconsider its policy of creating homogeneous districts where that policy would lead to polarization of interests in the legislature.

**BE IT FURTHER RESOLVED**, that a copy of this resolution be sent to the secretary of state and to the chairman of the districting and apportionment commission in Great Falls.

Approved February 6, 1974

## **SENATE RESOLUTION NO. 56**

**A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA REQUESTING THE CIVIL AERONAUTICS BOARD OF THE DEPARTMENT OF TRANSPORTATION TO ESTABLISH REGULA-**

TIONS WHICH WOULD PROVIDE FOR CONTINUED AIR SERVICE DURING PERIODS WHEN AN AIRLINE PROVIDING SOLE SERVICE IS SHUTDOWN; AND REQUESTING THE MONTANA CONGRESSIONAL DELEGATION TO SUPPORT H.R. 3282 AND S. 1665, BILLS WHICH WOULD ABOLISH MUTUAL AID PACTS AMONG AIRLINES.

WHEREAS, the availability of commercial air transport plays an important role in Montana's economic well-being, and

WHEREAS, many Montana cities do not have competitive air service on major routes, and

WHEREAS, any prolonged shutdown of service results in great economic dislocation to the people who rely on the airline for transportation, and

WHEREAS, a prolonged shutdown of service results in severe economic hardship to the airports which are dependent on landing fees for much of their financing, and

WHEREAS, the citizens of Montana have within the past two (2) years experienced the unhappy effects of a prolonged shutdown, and

WHEREAS, proper planning now can prevent a recurrence of past problems.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Chairman of the Civil Aeronautics Board of the Department of Transportation be requested to establish regulations which will provide air service during periods of shutdown.

BE IT FURTHER RESOLVED, that the Montana congressional delegation be urged to support Congressman Karth's bill, H.R. 3282, and Senator Gravel's bill, S. 1665, which have as their purpose the abolishment of mutual aid pacts which tend to discourage quick settlement of labor disputes.

BE IT FURTHER RESOLVED, that the Secretary of State be directed to send copies of this resolution to the Secretary of Transportation, the Chairman of the Civil Aeronautics Board, and the members of the Montana congressional delegation.

Approved March 6, 1974

## SENATE RESOLUTION NO. 57

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA DIRECTING THE FINANCE AND CLAIMS COMMITTEE TO ASSIGN TO A JOINT INTERIM SUBCOMMITTEE A STUDY OF THE STAFF REPORT OF THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS, UNITED STATES SENATE, OCTOBER 3, 1972, RELAT-

ING TO THE FORT BELKNAP INDIAN RESERVATION AND THE FORT BELKNAP BUILDERS, INC., AND TO REPORT THEIR FINDINGS AND PROPOSALS TO THE FIRST REGULAR SESSION OF THE FORTY-FOURTH LEGISLATURE.

WHEREAS, the Fort Belknap Indian Community has been forced into serious financial difficulty by a series of transactions which are the subject matter of the above cited report, and

WHEREAS, Montana businessmen have suffered serious financial losses as a result of a series of transactions which are the subject matter of the above cited report, and

WHEREAS, several recommendations were made by the staff of the Committee on Interior and Insular Affairs to prevent recurrence of the conditions which contributed to the problems which are the subject matter of said report, and

WHEREAS, it appears from the above cited report that some of the original building contract funds were withheld by the Housing Authority, the release of which was contingent upon completion of construction.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Finance and Claims Committee assign a study of the Staff Report of the Committee on Interior and Insular Affairs, United States Senate, October 3, 1972, relating to the Fort Belknap Indian Reservation and the Fort Belknap Builders, Inc., to a joint interim subcommittee to meet during the interim between the adjournment of the Forty-third Legislature and the beginning of the Forty-fourth Legislature, and

BE IT FURTHER RESOLVED, that this joint subcommittee conduct a study and thorough analysis of the Staff Report of the Committee on Interior and Insular Affairs, United States Senate, October 3, 1972, relating to the Fort Belknap Indian Reservation and the Fort Belknap Builders, Inc., to determine whether the recommendations of the Committee on Interior and Insular Affairs have been implemented and whether the Federal Agencies involved can provide any assistance to the Montana businessmen who have suffered serious financial losses, and

BE IT FURTHER RESOLVED, that the joint subcommittee report the results of its study and its recommendations for seeing that the recommendations of the Committee on Interior and Insular Affairs, United States Senate, are implemented and that the Federal Agencies involved provide whatever assistance they can to the Montana businessmen who have suffered serious financial losses, to the first regular session of the Forty-fourth Legislature, and

BE IT FURTHER RESOLVED, that the Secretary of State be instructed to send copies of this resolution to the Honorable Mike Mansfield and Lee Metcalf, Senators from the state of Montana, and the Honorable John Melcher and Richard G. Shoup, Congressmen from the state of Montana.

Approved March 9, 1974

**SENATE RESOLUTION NO. 59**

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA REQUESTING THE FORTY-THIRD LEGISLATIVE ASSEMBLY AND ALL STATE AGENCIES TO SALVAGE FOR RECYCLING USED PAPER WHEREVER FEASIBLE.

WHEREAS, legislative assemblies and offices of state government use large amounts of paper each year, and

WHEREAS, this legislature, this state and this nation are concerned about the shortage of paper, and

WHEREAS, the efficient use of forest products is of great concern to all our citizens, and

WHEREAS, this legislature is desirous of a concerted effort toward a continual program of salvaging paper products for re-use, and

WHEREAS, a new industry in the state of Montana has indicated its willingness to cooperate with the Forty-third Legislative Assembly in initiating an immediate program of recycling.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That this legislative assembly lead the way by immediately putting into effect a program, wherever feasible, for all concerned to aid in the salvaging of used paper for purposes of recycling.

BE IT FURTHER RESOLVED, that a copy of this resolution be sent to the director of the Department of Administration urging all offices of state government to join the legislature in such a program.

Approved March 11, 1974

**SENATE RESOLUTION NO. 60**

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA DECLARING FEBRUARY 27, 1974, "YELLOWSTONE COUNTY TAXPAYERS' APPRECIATION DAY" AND CALLING FOR APPROPRIATE RECOGNITION.

WHEREAS, citizens of the state of Montana are constantly inundated with statements from public officials concerning the amount of government funds being returned to local areas, and

WHEREAS, these statements fail to mention that these government funds came from local taxpayers in the first place, and

WHEREAS, little appreciation is shown the taxpayer for being the sole support of all government activity and services, and

WHEREAS, the state Department of Revenue has estimated, on the basis of individual income tax collections, that 15.88 percent of the general fund revenue for the state of Montana comes from Yellowstone County, which contains only 12.58 percent of the total state population, and

WHEREAS, the state Department of Revenue has estimated that tax collections from Yellowstone County alone would be sufficient to fund the operation of the state general fund for fifty-eight (58) days a year.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That February 27, 1974 be declared "Yellowstone County Taxpayers' Appreciation Day" in appreciation for the support all Montana taxpayers give to state government and, specifically, in appreciation of the fact that tax collections from Yellowstone County alone are sufficient to fund the 1974 state general fund budget through that date.

BE IT FURTHER RESOLVED, that all persons in the State Capitol and throughout the far reaches of state bureaucracy who benefit directly from the efforts of Yellowstone County taxpayers express appropriate recognition of the day by facing East, when not on state time, and pausing in momentary silence to contemplate the industry, diligence, commercial and industrial enterprise, and generosity of Yellowstone County taxpayers.

BE IT FURTHER RESOLVED, that on February 27, 1974, Yellowstone County taxpayers, having fulfilled their proportionate obligation by funding the state general fund for fifty-eight (58) days, wish the taxpayers in other counties well in paying their share of state government expenses for the remainder of 1974.

Approved March 1, 1974

## SENATE RESOLUTION NO. 61

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA REQUESTING THE COMMITTEE ON PRIORITIES TO ASSIGN THE APPROPRIATE STANDING COMMITTEES TO STUDY THE TAXATION OF MONEYS AND SOLVENT CREDITS.

WHEREAS, the state is constitutionally obliged to appraise, assess and equalize the valuation of all property within the state, and

WHEREAS, the fairness and collectability of a tax on moneys and solvent credits have been questioned.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Committee on Priorities is requested to assign the appropriate standing committees to study, with the assistance of the Department of

Revenue, methods of taxation of moneys and solvent credits presently classified as class 5 (a) property under section 84-301; the committees shall report to the first session of the Forty-fourth Legislature and shall consider existing and alternative taxing methods and procedures appropriate for Montana, and shall further consider the constitutional, economic, and fiscal implications of exempting moneys and solvent credits from taxation or of alternatives to the present method of taxing moneys and solvent credits.

Approved March 9, 1974

## SENATE RESOLUTION NO. 62

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA REQUESTING THE UNITED STATES CONGRESS TO TEMPORARILY SUSPEND PERTINENT PROVISIONS OF THE JONES ACT IN ORDER TO INCREASE THE SUPPLIES OF AMMONIA OR NITROGEN FOR USE IN FERTILIZER.

WHEREAS, fertilizer often is necessary to insure a high crop yield, and

WHEREAS, fertilizer is in short supply in the United States, and

WHEREAS, the state of Alaska has substantial quantities of ammonia or nitrogen which could be shipped to the continental United States, and

WHEREAS, the Jones Act prohibits transporting such materials unless it is carried in United States bottoms from one United States point to another United States point, and

WHEREAS, United States ships do not now exist to move the materials in the necessary quantities.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the state of Montana supports the efforts of agricultural producers to establish a more sufficient supply of fertilizer during the present shortage.

BE IT FURTHER RESOLVED, that the United States Congress temporarily suspend pertinent sections of the Jones Act which prevent the transporting of adequate quantities of fertilizers from Alaska to the continental United States.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the Montana Congressional Delegation.

Approved March 7, 1974



**SENATE RESOLUTION NO. 63**

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA REQUESTING THE FEDERAL POWER COMMISSION TO CONDUCT THE HEARINGS CONCERNING THE EXPANSION OF THE COLORADO INTERSTATE GAS COMPANY ACTIVITIES INTO THE BEARPAW MOUNTAIN AREA (DOCKET NO. CP 73-340) IN A CONVENIENT LOCATION IN MONTANA.

WHEREAS, the Colorado Interstate Gas Company is seeking the Federal Power Commission's approval to construct a gas pipeline and related facilities to remove gas from the Bearpaw Mountain gas fields, and

WHEREAS, such an activity is of great interest and concern to Montanans, and

WHEREAS, the hearings on Colorado Interstate Gas Company's request are presently scheduled to be held in Washington, D.C. and are thus effectively beyond the reach of many interested persons in Montana.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Federal Power Commission be requested to change the place of the hearing on the application of the Colorado Interstate Gas Company (Docket No. CP 73-340) from Washington, D.C. to some convenient location in Montana.

BE IT FURTHER RESOLVED, that the Secretary of the Senate send copies of this resolution to the Chairman of the Federal Power Commission and the members of the Montana Congressional Delegation.

Approved March 8, 1974

**SENATE RESOLUTION NO. 64**

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA REQUESTING CONGRESS TO UNDERTAKE A COMPREHENSIVE INVESTIGATION OF FUTURE TRANSPORTATION PRIORITIES, PARTICULARLY AS THEY AFFECT MONTANA.

WHEREAS, the present and future transportation needs of the nation and Montana, in particular, are changing, and

WHEREAS, railroads serving Montana, are continuing the practice of abandoning presently unused or little used rail facilities although no full assessment of Montana's projected needs has been made, and

WHEREAS, present federal regulation in this area does not take into account possible future needs.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That to preserve rail facilities that may be utilized sometime in the future, the Congress of the United states is requested to immediately undertake a comprehensive investigation of future transportation priorities, particularly as they affect Montana, and

BE IT FURTHER RESOLVED, that copies of this resolution be sent by the Secretary of State of Montana to the chairman of the Interstate Commerce Commission, the chairmen of the Commerce Committees of both the House of Representatives and the Senate, and to the Montana Congressional delegation.

Approved March 11, 1974

### SENATE RESOLUTION NO. 65

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA  
URGING CONGRESS TO BUILD AN INTERPRETIVE CENTER AT  
THE BISON RANGE AT MOIESE, MONTANA.

WHEREAS, the National Bison Range at Moiese, Montana, offers a unique opportunity to see, in their natural habitat, the bison that once covered the plains, and

WHEREAS, an interpretive center at the Bison Range is needed to offer much more information concerning the environment, behavior and history of the bison and the history of the particular herd at Moiese, and

WHEREAS, many of the people who first established the Moiese herd and have artifacts and information, that could be donated to the interpretive center, are now alive, and

WHEREAS, these people might be reluctant to donate their artifacts and information to a museum but would willingly give such to a local center, and

WHEREAS, the United States Department of the Interior presently has long-range plans for an interpretive center at the Bison Range, but such plans may prohibit taking advantage of the artifacts and information held by pioneers of the area, because of the older age of these pioneers, and

WHEREAS, fences, roads, buildings, and the need for frequent use of motorized equipment all conflict with wilderness status, and

WHEREAS, the intensive management program associated with the herd of bison precludes wilderness designation, and

WHEREAS, a Bureau of Sport Fisheries and Wildlife study has concluded that none of the National Bison Range is suitable for inclusion in the National Wilderness Preservation System.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Montana congressional delegation be directed to inform the

Congress of the United States, and the appropriate federal agencies, of interest in and desire in Montana for an interpretive center at the Bison Range at Moiese, Montana, and to urge the Department of the Interior to take immediate steps to begin organization and construction of such a center, and

BE IT FURTHER RESOLVED, that copies of this resolution be sent to the Montana congressional delegation and to the Governor of the state of Montana.

Approved March 8, 1974

### **SENATE RESOLUTION NO. 67**

**A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA DIRECTING THE MONTANA ARTS COUNCIL TO COMMISSION A STATUE OF JEANNETTE RANKIN FOR PLACEMENT IN THE ROTUNDA OF THE STATE CAPITOL.**

WHEREAS, the late Jeannette Rankin of Montana brought the attention of the world to herself and the people of Montana by winning a seat in the United States House of Representatives and becoming the first woman to sit in any major national legislative body, and

WHEREAS, in her two terms in Congress and throughout her life, Jeannette Rankin displayed exceptional qualities of courage, candor, and commitment to moral principles of which the people of Montana are justly proud.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Montana Arts Council be directed to commission a statue of the late Jeannette Rankin of Montana, which shall be a life-sized likeness and which shall include a plaque, inscription, or other verbal description of her significance to Montana, to the United States of America, and to the dignity of women. In granting the commission the council shall consider incorporating native Montana metals or stone, and

BE IT FURTHER RESOLVED, that the council shall award the commission subject to the appropriation of funds, if the council determines that an appropriation is needed. The council may accept gifts and grants for the purposes of this act and shall apply to federal agencies authorized to make grants for such purposes, and

BE IT FURTHER RESOLVED, that the department of administration shall place the statue in the northeast corner of the rotunda in the state capitol, and shall move the plaque now in that corner to another suitable location within the capitol, and

BE IT FURTHER RESOLVED, that a copy of this resolution be forwarded to the chairman of the Montana Arts Council with the request that he proceed as speedily as possible with this project.

Approved March 12, 1974

**SENATE RESOLUTION NO. 68**

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCERNING DISPOSAL OF HAZARDOUS WASTES DIRECTED TO THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES.

WHEREAS, the proper disposal of hazardous wastes will definitely affect public health and safety, and

WHEREAS, hazardous wastes have not been included in the present statutes of Title 69, chapter 40, and

WHEREAS, the Solid Waste Section of the Department of Health and Environmental Sciences is the agency responsible for regulating the disposal of all wastes, with the exception of water-carried wastes.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Solid Waste Section of the Department of Health and Environmental Sciences shall be responsible for the regulation of the disposal of hazardous wastes.

BE IT FURTHER RESOLVED, that the term "hazardous wastes" means any waste or combination of wastes which pose a substantial hazard to human health or living organisms because such wastes are nondegradable or dangerously persistent in nature, or because they can be biologically magnified, or because they can be lethal.

Approved March 15, 1974

**SENATE RESOLUTION NO. 69**

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA REQUESTING THE UNITED STATES CONGRESS TO INVESTIGATE AND TAKE ACTION TO LIMIT THE OVERSEAS EXPORT OF NITROGEN AND PHOSPHATE FERTILIZERS PRODUCED IN THE UNITED STATES; INVENTORY AVAILABLE DOMESTIC FERTILIZER SUPPLIES AND DEMAND; IMPLEMENT AN EQUITABLE ALLOCATION PROGRAM OF EXISTING SUPPLIES TO STATES.

WHEREAS, it is the national policy to produce increased quantities of food supplies, and

WHEREAS, additional acreage and increased crop production are greatly needed to meet these policy goals, and

WHEREAS, Montana has essentially no fertilizer manufacturing within its borders, and

WHEREAS, Montana farmers and ranchers are faced with a thirty to forty percent (30-40%) deficit in required tonnage of fertilizer, and

WHEREAS, such a serious fertilizer shortage will result in a significant reduction of crop and livestock production.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the state of Montana makes known its views and concern for a more sufficient supply and a more equitable distribution of fertilizer to the states.

BE IT FURTHER RESOLVED, that the United States Congress investigate and take action to limit the overseas export of nitrogen and phosphate fertilizers produced in the United States.

BE IT FURTHER RESOLVED, that the United States Congress inventory available domestic fertilizer supplies and demand and implement an equitable allocation program of existing supplies to the states.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the President of the United States, the Montana congressional delegation, Governor Thomas Judge, and the Secretary of Agriculture, Earl J. Butz.

Approved March 12, 1974

## SENATE RESOLUTION NO. 71

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA REQUESTING THE DEPARTMENT OF INSTITUTIONS TO INVESTIGATE THE FEASIBILITY AND DESIRABILITY OF OPERATING THE PRISON RANCH FROM A REVOLVING FUND ACCOUNT AND AS AN ENTERPRISE OPERATION.

WHEREAS, the Montana State Prison ranch presently provides beef, pork, poultry, and dairy products to other institutions at no charge, and

WHEREAS, the ranch operation is presently funded from the general fund and federal revenue sharing; and

WHEREAS, the practice of not charging the respective institutions for commodities received results in: unrealistic cost portrayal of the food services at each institution; the inability to develop complete financial statements for the ranch operation; the lack of a means to measure and compare the success, or lack of success of the various segments of the ranch operation.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Department of Institutions, shall take the necessary steps to operate the prison ranch as an enterprise operation which would neces-

sitate establishing a revolving accounting entity to record all financial activities relating to the ranch.

BE IT FURTHER RESOLVED, that each institution develop a total budget for food services; be billed for prison produce delivered and the ranch budgetary operations from the revolving fund account be based on anticipated revenue from the sale of goods produced.

Approved March 13, 1974

## SENATE RESOLUTION NO. 72

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA DIRECTING THE MONTANA DEPARTMENT OF AGRICULTURE AND THE DEPARTMENT OF LIVESTOCK IN COOPERATION WITH GENERAL FARM AND RANCH ORGANIZATIONS AND COMMODITY GROUPS TO PREPARE AND PROVIDE DATA AND INFORMATION TO THE PUBLIC CONCERNING THE RELATIONSHIP BETWEEN THE AMOUNT AGRICULTURE RECEIVED AND THE FINAL COST TO THE CONSUMERS.

WHEREAS, the public needs to know what the market basket costs are in relation to farm and ranch expenses in producing the food and fiber, and

WHEREAS, farm production expenses will again move up sharply in 1974, fueled by a dramatic rise in prices for petroleum products, fertilizers and farm machinery, and

WHEREAS, outlays for feed and seed will show another large increase due to higher prices and a need for more of these inputs, and

WHEREAS, continuing inflation will be a large factor, and a rise in total production expenses will be substantially above the 1972-1973 production expense estimates.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the state of Montana supports the efforts of the Departments of Agriculture and Livestock, general farm and ranch organizations and commodity groups to provide data and inform the public on prices paid and costs incurred to produce the food on farm and ranches in relation to the relative costs of the food in the market baskets.

BE IT FURTHER RESOLVED, that additional funding for this effort be sought from outside sources, such as the Montana Committee on the Humanities, general farm and ranch organizations and commodity groups.

BE IT FURTHER RESOLVED, that copies of this resolution be sent to the Governor, Secretary of State, general agricultural organizations and commodity groups, the Department of Livestock and the Department of Agriculture.

BE IT FURTHER RESOLVED, that the Secretary of State is requested to send copies of this resolution to the United States Senate and House of Representatives and the members of Montana's congressional delegation, and to the National Cost of Living Council.

Approved March 12, 1974

### **SENATE RESOLUTION NO. 73**

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA REQUESTING THE COMMITTEE ON PRIORITIES TO ASSIGN THE LEGISLATIVE COUNCIL TO STUDY CUSTOM COMBINING TAXATION AND FEES.

WHEREAS, neighboring states impose different taxes and fees for the entrance of custom combiners into their states, and

WHEREAS, there is lacking sufficient information on which to impose the proper taxes and fees for custom combiners entering the state of Montana, and

WHEREAS, it is necessary in imposing such taxes and fees that the interests of the state of Montana, resident and nonresident custom combiners, and the farmers of this state be protected.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Committee on Priorities assign to the appropriate standing committee a study of custom combining taxation fees in Montana.

BE IT FURTHER RESOLVED, that the study review the needs and interests of the state of Montana, resident and nonresident custom combiners, and the farmers of the state of Montana.

BE IT FURTHER RESOLVED, that the committee report its findings and recommendations to the first session of the Forty-fourth Legislature no later than January 15, 1975.

Approved March 15, 1974

### **SENATE RESOLUTION NO. 74**

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA REQUESTING THE LEGISLATIVE COUNCIL TO CONDUCT A STUDY OF THE RISING COSTS OF EDUCATION, MOST PARTICULARLY SCHOOL ADMINISTRATION COSTS AND WHAT EFFECT THE STATE'S ACCREDITATION STANDARDS HAVE ON SUCH RISING COSTS.

WHEREAS, the total public school enrollment increased by only 4.3%

from 1963-65 to 1973-75 and has actually declined at the elementary level in recent years, but the general fund budget per student has increased by 119% during the same time period, and

WHEREAS, the number of teachers increased by 19% but the number of school administrators increased by 59%, and

WHEREAS, the total teacher salaries increased by 110% but the total administrator salaries increased by 200%, and

WHEREAS, the teacher salary proportion of the general fund budget of the school districts actually decreased by 11% but the administrators salary proportion of the general fund budget increased by 33%.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That a study be undertaken by the Legislative Council in order to determine the reasons for the rising costs of public elementary and secondary education in the state of Montana with emphasis on the increasing costs of administration compared to instruction and what effect the state's standards for accreditation play in such rising costs of education.

Approved March 13, 1974

## SENATE RESOLUTION NO. 75

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA REQUESTING THE COMMITTEE ON PRIORITIES TO ASSIGN THE APPROPRIATE STANDING COMMITTEES TO STUDY THE LIQUOR LAWS FOR THE PURPOSE OF GENERALLY UPDATING AND REVISING SUCH LAWS.

WHEREAS, the provisions concerning alcoholic beverages in Title 4 of the Revised Codes of Montana, 1947, were enacted, for the most part, in 1933 and have not been revised in forty-one (41) years, and

WHEREAS, a number of these provisions are obsolete, archaic, or presently serve no useful social purpose, and

WHEREAS, a legislative study of the liquor laws, which would make recommendations for the general updating and revision of such laws while not making recommendations for any fundamental change in the policies underlying the laws, would be useful to the legislature and the people of Montana.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Committee on Priorities is requested to assign the appropriate standing committees to study the statutory provisions governing the sale and consumption of alcoholic beverages, to recommend such revisions and deletions in these laws as is needed to bring the laws up to date and to remove provisions which are found to be archaic or obsolete, while making



no recommendations as to the basic policies underlying the liquor laws, and to report its findings and recommendations to the first session of the Forty-fourth Legislature.

Approved March 15, 1974

### **SENATE RESOLUTION NO. 76**

**A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA REQUESTING THE COMMITTEE ON PRIORITIES TO ASSIGN THE APPROPRIATE STANDING COMMITTEES TO STUDY THE TAXATION OF NEW INDUSTRIAL FACILITIES.**

WHEREAS, many taxing jurisdictions seek to attract investment in new industrial plants by providing special reductions in the tax burden on such plants for several years, and

WHEREAS, the state of Montana has a tax incentive for new industrial investment in Class Seven of section 84-301, R.C.M. 1947, but the incentive is limited to certain types of industry and excludes other types which ought to be encouraged to locate in Montana, and

WHEREAS, the legislature should review the application of the Class Seven tax incentive in the context of a policy to strengthen and diversify the economy of Montana by attracting investment in sectors such as light, non-polluting manufacturing.

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:**

That the Committee on Priorities is requested to assign the appropriate standing committees to study, with the assistance of the Department of Revenue, the taxation of new industrial facilities, reviewing the administration and application of Class Seven, section 84-301, to determine its effectiveness as an incentive for desirable economic growth, and to report the resulting findings and recommendations to the first session of the Forty-fourth Legislature.

Approved March 15, 1974

### **SENATE RESOLUTION NO. 77**

**A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA REQUESTING THE COMMITTEE ON PRIORITIES TO CONSIDER REQUESTING A JOINT STANDING COMMITTEE BE ASSIGNED THE STUDY OF THE PROBLEMS INVOLVED IN EXISTING MONTANA LANDLORD AND TENANT LAW, AND REPORT ITS FINDINGS TO THE FIRST SESSION OF THE FORTY-FOURTH LEGISLATIVE ASSEMBLY WITH DRAFT LEGISLATION.**

WHEREAS, both landlords and tenants are in need of clear, explicit laws outlining their responsibilities and obligations, and

WHEREAS, present landlord and tenant laws are seemingly inadequate to provide this explicit direction, and

WHEREAS, this problem is complex and affects a wide range of public interests.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Committee on Priorities is requested to consider and assign an appropriate joint standing committee to study the problems involved with landlord and tenant law in Montana.

BE IT FURTHER RESOLVED, that a report and draft legislation be prepared and submitted by the assigned committee to the first session of the Forty-fourth Legislative Assembly.

Approved March 15, 1974

### SENATE RESOLUTION NO. 78

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA REQUESTING THE COMMITTEE ON PRIORITIES TO CONSIDER AND ASSIGN A JOINT STANDING COMMITTEE TO STUDY THE PROBLEMS INVOLVED WITH IMPLEMENTING THE 1972 MONTANA CONSTITUTION IN ARTICLE II, SECTION 8, "RIGHT OF PARTICIPATION", SECTION 9, "RIGHT TO KNOW", AND SECTION 10, "RIGHT OF PRIVACY", AND REPORT THE FINDINGS OF THIS STUDY, TOGETHER WITH DRAFT LEGISLATION, TO THE FIRST SESSION OF THE FORTY-FOURTH LEGISLATIVE ASSEMBLY.

WHEREAS, the legislative assembly has the duty to implement the 1972 Montana Constitution with well-researched and well-considered legislation, and

WHEREAS, research and drafting of legislation providing for fundamental citizens' rights concerning the new and expanding right of participation, right to know, and right of privacy should be accomplished only after careful and considered reflection, and

WHEREAS, a balancing between the public's rights of open access and participation in their governmental affairs and each individual's right of privacy is by nature complex and requiring close study.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Committee on Priorities is requested to consider and assign an appropriate joint standing committee to study the problems involved with implementing the 1972 Montana Constitution in Article II, Section 8, "Right of Participation", Section 9, "Right to Know", and Section 10, "Right of Privacy".

BE IT FURTHER RESOLVED, that a report and draft legislation be

prepared and submitted by the assigned committee to the first session of the Forty-fourth Legislative Assembly.

Approved March 15, 1974

### **SENATE RESOLUTION NO. 79**

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA REQUESTING THE COMMITTEE ON PRIORITIES TO CONSIDER REQUESTING A JOINT STANDING COMMITTEE BE ASSIGNED THE STUDY OF THE PROBLEMS INVOLVED IN EXISTING MENTAL COMMITMENT PROCEDURES IN MONTANA, AND REPORT ITS FINDINGS TO THE FIRST SESSION OF THE FORTY-FOURTH LEGISLATIVE ASSEMBLY WITH DRAFT LEGISLATION.

WHEREAS, mental health care and treatment are of great importance to the public health and welfare of the citizens of Montana; and

WHEREAS, mental commitment procedures involve both serious health care and legal considerations; and

WHEREAS, legislation concerning itself with the problems of mental commitment will have profound impact on the state's judicial system and a wide range of state and community mental health facilities.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Committee on Priorities is requested to consider and assign an appropriate joint standing committee to study the problems involved with mental commitment procedures in Montana.

BE IT FURTHER RESOLVED, that a report and draft legislation be prepared and submitted by the assigned committee to the first session of the Forty-fourth Legislative Assembly.

Approved March 15, 1974

### **SENATE RESOLUTION NO. 81**

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA INFORMING THE MONTANA CONGRESSIONAL DELEGATION AND APPROPRIATE FEDERAL AGENCIES, OF THE INTEREST OF MONTANA IN LONG-RANGE COMPREHENSIVE PLANNING FOR THE DEVELOPMENT OF ENERGY AND OTHER RESOURCES.

WHEREAS, Montana is entering into a period of unprecedented development of its natural resources, which will have a far reaching influence upon the quality of life in the state, and in the surrounding region, and

WHEREAS, there is a need to develop and maintain mechanisms to assure the development of coal and other natural resources in a proper, environmentally sound, and socially compatible manner, and

WHEREAS, the gathering and coordination of social, economic, and environmental information, on a regional basis, is essential for intelligent planning and development, and must be undertaken, immediately in advance of large scale development.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Federal Energy Commission be requested and urged to initiate regional planning programs which will determine and identify the social, economic, and environmental impact of energy and resource development in Montana and adjacent states.

BE IT FURTHER RESOLVED, that a copy of this resolution be sent to the Montana Congressional delegation soliciting their support for such regional research proposals.

Approved March 15, 1974

## SENATE RESOLUTION NO. 82

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA  
URGING THE UNITED STATES HOUSE OF REPRESENTATIVES  
TO POSTPONE ANY ACTION ON FEDERAL LAND-USE PLANNING  
LEGISLATION IN 1974.

WHEREAS, the people of Montana value the right to own and use property with minimum government regulation and prefer such regulation at the local government level where prompt appeal and review are possible, and

WHEREAS, legislation pending before the Congress in bill number H.R. 10294 would turn upside down this long-cherished right of property owners by requiring state governments to control land-use decisions in accordance with federal guidelines, and

WHEREAS, the Congress should not enact H.R. 10294 or any legislation with a similar formula for federal control, but should consider alternatives for improving local government planning and state planning without infringing on the rights of private property.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the House of Representatives of the Congress is urged to take no further action on H.R. 10294 for the duration of the 1974 session of Congress.

BE IT FURTHER RESOLVED, that the Secretary of the Senate send copies of this resolution to the Honorable John Melcher and the Honorable Richard Shoup, Representatives from the State of Montana.

Approved March 15, 1974

**SENATE RESOLUTION NO. 83**

**A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA EXPRESSING THE CONCERN OF THE SENATE WITH THE PROBLEM OF DEVISING AN ADEQUATE AND EQUITABLE TAXATION PROGRAM FOR THE TAXATION ON COAL AND OTHER FOSSIL FUELS; REQUESTING THE COMMITTEE ON PRIORITIES TO DIRECT THE APPROPRIATE STANDING COMMITTEE TO CONDUCT A STUDY OF THE TAXATION OF THE COAL AND OTHER FOSSIL FUEL INDUSTRIES AND TO MAKE RECOMMENDATIONS TO THE NEXT SESSION OF THE MONTANA LEGISLATURE.**

WHEREAS, the development of coal resources and other fossil fuels is an increasingly important industry in Montana, and

WHEREAS, it is essential that the state of Montana devise a system of taxation of this industry which is both equitable and adequate to assure that the state will share in the benefits of the development of these essential resources, and

WHEREAS, the present system of taxation of the coal and other fossil fuel industries is not consistent or coordinated, and

WHEREAS, the problem of taxation of the coal and other fossil fuel industries is too complicated and too important to be resolved by hasty study or deliberation.

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:**

That the Senate of the state of Montana declares its deep concern that a fair and adequate system of taxation be developed for the coal mining and other fossil fuel industries in Montana.

**BE IT FURTHER RESOLVED**, that the Senate endorses the concept of taxation of the coal mining and other fossil fuel industries based on a percentage of the delivered price of fuels mined or otherwise extracted within the state.

**BE IT FURTHER RESOLVED**, that the Committee on Priorities is requested to direct the appropriate standing committee to conduct a study of the present structure of taxation of the coal mining and other fossil fuel industries in Montana.

**BE IT FURTHER RESOLVED**, that this study evaluate the present net proceeds tax, resource indemnity trust tax, strip coal mines license tax, corporate income tax, the tax on equipment, machinery and real estate, the tax on the right to prospect, and any other taxes which affect the fossil fuel industries and determine whether these taxes overlap or conflict with each other.

**BE IT FURTHER RESOLVED**, that this study explore ways in which taxation of the coal mining and other fossil fuel industries can be based

on a percentage of the delivered price of the coal and other fossil fuels mined or otherwise extracted in Montana.

BE IT FURTHER RESOLVED, that the standing committee make full use of the information and expertise available to it through the various agencies of the state government, through the federal government, and from the coal mining and other fossil fuel industries themselves.

BE IT FURTHER RESOLVED, that the standing committee report its findings and proposals for legislation to the next session of the Montana legislature no later than January 15, 1975.

Approved March 16, 1974

### **SENATE RESOLUTION NO. 84**

**A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA DIRECTING THAT THE CHAMBERS, SENATE OFFICES, STENO POOL, AND WORK AREAS AND THEIR EQUIPMENT AND FURNISHINGS BE RESERVED FOR USE ONLY BY THE MEMBERS OF THE LEGISLATURE, ITS OFFICERS, COMMITTEES AND STAFF DURING A LEGISLATIVE INTERIM.**

WHEREAS, Montana's constitution in article V, section 6, requires the legislature to be a continuous body; and

WHEREAS, the work of the legislature and its committees is on an annual basis; and

WHEREAS, the powers, duties, and responsibilities of the legislature have increased, the staff and space needs of the legislature have correspondingly increased, and

WHEREAS, the offices of the President of the Senate, Majority Floor Leader, Minority Floor Leader, and Secretary of the Senate contain copies of journals, session laws, and other pertinent documents, papers and records relevant only to their operation.

**NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:**

That the chambers, Senate offices, steno pool, and work areas and their equipment and furnishings be reserved for use only by the members of the legislature, its officers, committees, and staff during a legislative interim.

BE IT FURTHER RESOLVED, that the chambers and work areas may be used by other branches of government only on limited occasions and then only with the approval of the business manager.

BE IT FURTHER RESOLVED, that the offices of the President of the Senate, Majority Floor Leader, Minority Floor Leader, and Secretary of the Senate are reserved for use only by those officers and may not be used by any other person without the express approval of the Senate Committee on Legislative Administration.

BE IT FURTHER RESOLVED, that a copy of this resolution be transmitted to Mr. Doyle B. Saxby, Director of the Department of Administration, Helena, Montana.

Approved March 16, 1974

## SENATE RESOLUTION NO. 85

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA DIRECTING CERTAIN LEGISLATIVE EMPLOYEES TO COMPLETE THE BUSINESS OF THE SECOND REGULAR SESSION OF THE 43RD LEGISLATURE.

WHEREAS, the completion of business of the second regular session of the 43rd Legislature encompasses the continued employment of certain legislative employees.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the officers, employees and attaches of the Senate hereinafter named, are hereby employed and retained in employment of the Senate of the second regular session of the 43rd Legislature of the state of Montana to continue and remain in service after the final adjournment of the second regular session of the 43rd Legislature for the purpose of completing all unfinished business incident to and consequent upon the session, including:

1. Under the direction of the Secretary of the Senate, preparation of a final and permanent bill status, final integration of journal, arrangement, labeling and marking of all bills, delivery of session records and books to the Secretary of State, delivery of committee records and books to State Historical Society, and securing proper receipts and acquittances therefor, in accordance with Joint Rule 3-5 of the Rules of the Montana Legislature, and the performance of such other duties as may be necessary and proper under the direction of the Senate.

2. The Sergeant-at-Arms office shall account for and deliver all Senate keys to the Legislative Business Manager.

| EMPLOYEES & ATTACHES                           | NO. OF DAYS |
|------------------------------------------------|-------------|
| John Hanson<br>which includes all earned leave | 29          |
| Bill Conley                                    | 3           |
| Irma Paul                                      | 3           |
| Karen Kelley                                   | 15          |
| Jean Fallon                                    | 1           |
| Grace Bowman                                   | 2           |

|                         |    |
|-------------------------|----|
| Dorothy Hill            | 3  |
| Ellen Reid              | 2  |
| Judy Pratt              | 1  |
| Beverly Hilger          | 2  |
| Barbara Lester          | 2  |
| Mary E. (Betty) Jakovac | 7  |
| Elaine Rung             | 5  |
| Angeline Wierenga       | 15 |
| Leota Hoyer             | 5  |
| Clyde Neu               | 2  |
| Ralph Erving            | 2  |
| William Neary           | 1  |
| Nita Fjeseth            | 1  |
| Sylvia Kinsey           | 1  |
| Helen Dunbar            | 1  |

The payrolls covering each employment shall be authenticated by the President of the Senate and the Legislative Business Manager and payment of the same shall be made out of any funds heretofore appropriated and remaining unexpended at the close of the session for legislative expenses.

This resolution shall be effective on adoption by the Senate, and said Resolution specifically supersedes Senate Joint Resolution No. 46 effective January 23, 1974 insofar as the context indicates with respect to the number of days of post-session employment granted certain legislative officers, employees and attaches of the Senate of the second regular session of the 43rd Legislature.

Approved March 16, 1974



# MONTANA SESSION LAWS

## CHANGES IN NAMES DECREED IN 1973

| Date of<br>Judgment | Original Name                                                                                                                                                             | Name Decreed                                                  | Residence    |
|---------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------|--------------|
| Jan. 3, 1973        | Vernie Boyle Remington<br>Vernie Hartshorn Boyle &<br>Verna B. Remington.....                                                                                             | Verna Boyle Remington.....                                    | Billings     |
| Jan. 8, 1973        | Robert B. Nelson.....                                                                                                                                                     | Robert Nelson Johnson.....                                    | Missoula     |
| Jan. 8, 1973        | Steven Craig Smith.....                                                                                                                                                   | Steven Craig Smith Budde.....                                 | Billings     |
| Jan. 29, 1973       | Tom E. Maynard.....                                                                                                                                                       | William Frederick Valzure II.....                             | Missoula     |
| Jan. 29, 1973       | Marion Ray Adkinson.....                                                                                                                                                  | Marion Ray Carpenter.....                                     | Glasgow      |
| Jan. 29, 1973       | Bradley Laine Adkinson.....                                                                                                                                               | Bradley Laine Carpenter.....                                  | Glasgow      |
| Feb. 5, 1973        | Shauna Renee Philp.....                                                                                                                                                   | Shauna Renee Montoya.....                                     | Butte        |
| Feb. 5, 1973        | Kelly Lynn Spadoni.....                                                                                                                                                   | Kelly Lynn Montoya.....                                       | Butte        |
| Feb. 9, 1973        | William E. Toole.....                                                                                                                                                     | William E. O'Toole.....                                       | Helena       |
| Feb. 14, 1973       | Linda Collins.....                                                                                                                                                        | Linda Knadler.....                                            | Anaconda     |
| Feb. 22, 1973       | Hope Emerson Sladish.....                                                                                                                                                 | Hope Emerson Sage.....                                        | Missoula Co. |
| Feb. 22, 1973       | Donald Miller Sladish.....                                                                                                                                                | Donald Miller Sage.....                                       | Missoula Co. |
| Feb. 23, 1973       | Katherine McCants.....                                                                                                                                                    | Katherine McGuire.....                                        | Miles City   |
| Feb. 27, 1973       | Julie Kramlich.....                                                                                                                                                       | Julie Kogele.....                                             | Miles City   |
| Mar. 2, 1973        | Christ The King Evangelical<br>Lutheran Congregation Unaltered,<br>Augsburg Confession, Affiliated<br>with the Lutheran Church, Missouri<br>Synod, Billings, Montana..... | Christ The King Lutheran Church.....                          | Billings     |
| Mar. 2, 1973        | Patrick Warren Fry.....                                                                                                                                                   | Patrick Warren Mahoney.....                                   | Helena       |
| Mar. 8, 1973        | George David Hein.....                                                                                                                                                    | David Hein.....                                               | Missoula Co. |
| Mar. 8, 1973        | Mabel Catherine Rover.....                                                                                                                                                | Mabel Catherine Teskey.....                                   | Missoula Co. |
| Mar. 8, 1973        | Ruth Maurine Reese.....                                                                                                                                                   | Ruth Maurine Shaffer.....                                     | Missoula     |
| Mar. 8, 1973        | Angela Mae Howendobler.....                                                                                                                                               | Angela Mae Orsborn.....                                       | Shelby       |
| Mar. 9, 1973        | Lincoln County Sheriff's Posse, Inc.                                                                                                                                      | North Lincoln County Search &<br>Rescue Association, Inc..... | Eureka       |
| Mar. 12, 1973       | Clyde Henry Pugh.....                                                                                                                                                     | Clyde Henry Hughes.....                                       | Helena       |
| Mar. 12, 1973       | Dorothy May Pugh.....                                                                                                                                                     | Dorothy May Hughes.....                                       | Helena       |
| Mar. 19, 1973       | Nancy Lynn Davis.....                                                                                                                                                     | Nancy Lynn Holley.....                                        | Missoula     |
| Mar. 28, 1973       | Randall Allen Thomsen.....                                                                                                                                                | Sterling Howard Silver, Jr.....                               | Billings     |
| Mar. 30, 1973       | Georgia D. Irvin.....                                                                                                                                                     | Jean Stewart.....                                             | Butte        |
| Apr. 4, 1973        | Joseph Matthew Wanner.....                                                                                                                                                | Joseph Matthew Warner.....                                    | Billings     |
| Apr. 5, 1973        | William Robert Morris<br>a/k/a Joseph Roland Fields.....                                                                                                                  | Joseph Shannon Marchkii.....                                  | Missoula     |
| Apr. 9, 1973        | Juanita Shirley Dustin.....                                                                                                                                               | Juanita Shirley Richards.....                                 | Billings     |
| Apr. 10, 1973       | Eula Clark.....                                                                                                                                                           | Eula Peterson.....                                            | Hot Springs  |
| Apr. 12, 1973       | Ruth Ellen Keith.....                                                                                                                                                     | Ruth Ellen Delger.....                                        | Missoula     |
| Apr. 24, 1973       | Lillian R. Ambrogini.....                                                                                                                                                 | Lillian R. Frazier.....                                       | Plains       |
| Apr. 26, 1973       | Edward Frank Stratton.....                                                                                                                                                | Edward Frank Stumvoll.....                                    | Deer Lodge   |
| Apr. 26, 1973       | Ruth Louise Stratton.....                                                                                                                                                 | Ruth Louise Stumvoll.....                                     | Deer Lodge   |
| Apr. 26, 1973       | Virginia Douthitt.....                                                                                                                                                    | Virginia Hodgson.....                                         | Miles City   |
| Apr. 30, 1973       | Flora Russell.....                                                                                                                                                        | Flora McDonald.....                                           | Miles City   |
| May 8, 1973         | Margaret Walker.....                                                                                                                                                      | Margaret Porter.....                                          | Forsyth      |
| May 9, 1973         | Elizabeth Sarah Leist.....                                                                                                                                                | Elizabeth Sarah Newman.....                                   | Cut Bank     |
| May 14, 1973        | Connie Crosby.....                                                                                                                                                        | Connie Higgins.....                                           | Miles City   |
| May 14, 1973        | Joyce Marang.....                                                                                                                                                         | Joyce Kinnebrew.....                                          | Miles City   |
| May 18, 1973        | Sergio Figueroa Martinez.....                                                                                                                                             | Sergio Figueroa Regland.....                                  | Ravalli Co.  |
| May 21, 1973        | Janell Lundhagen.....                                                                                                                                                     | Jan Christine Lundhagen.....                                  | Billings     |
| May 22, 1973        | Nelson Cavanaugh Story.....                                                                                                                                               | Nelson Giles Story.....                                       | Emigrant     |
| May 22, 1973        | Michael Vincent Story.....                                                                                                                                                | Michael Cavanaugh Story.....                                  | Emigrant     |
| May 25, 1973        | Beverly June Jones.....                                                                                                                                                   | Beverly June Holmen.....                                      | Miles City   |
| June 1, 1973        | Dorothy Gonnerman.....                                                                                                                                                    | Dorothy Johnson.....                                          | Billings     |
| June 8, 1973        | Carol Lynn Viall.....                                                                                                                                                     | Carol Lynn Weyerbacher.....                                   | Miles City   |
| June 12, 1973       | Gail Louise Thoenke.....                                                                                                                                                  | Gail Louise Congdon.....                                      | Billings     |
| June 13, 1973       | Glennis Lee King.....                                                                                                                                                     | Glennis Lee Cates.....                                        | St. Ignatius |
| June 18, 1973       | Georgia Ann Sala.....                                                                                                                                                     | Georgia Ann Dignan.....                                       | Bozeman      |
| June 19, 1973       | Georgette M. Kogolshak.....                                                                                                                                               | Georgette M. Kinder.....                                      | Livingston   |
| June 20, 1973       | George R. Hoar.....                                                                                                                                                       | George R. Orr.....                                            | Anaconda     |
| June 22, 1973       | James Richard Hoar.....                                                                                                                                                   | James Richard Orr.....                                        | Butte        |
| June 22, 1973       | Carol J. Hoar.....                                                                                                                                                        | Carol J. Orr.....                                             | Butte        |
| June 22, 1973       | John T. Hoar.....                                                                                                                                                         | John T. Orr.....                                              | Butte        |
| June 22, 1973       | Beverly J. Hoar.....                                                                                                                                                      | Beverly J. Orr.....                                           | Butte        |
| June 22, 1973       | David Hoar, Jr.....                                                                                                                                                       | David Orr.....                                                | Butte        |
| June 22, 1973       | Ceil A. Hoar.....                                                                                                                                                         | Ceil A. Orr.....                                              | Butte        |
| June 22, 1973       | Mary Carol Hoar.....                                                                                                                                                      | Mary Carol Orr.....                                           | Butte        |
| June 22, 1973       | David Michael Hoar.....                                                                                                                                                   | David Michael Orr.....                                        | Butte        |
| June 25, 1973       | Gered Richard West.....                                                                                                                                                   | Gered West.....                                               | Butte        |

# MONTANA SESSION LAWS

## CHANGES IN NAMES DECREED IN 1973

| Date of Judgment | Original Name                    | Name Decreed               | Residence             |
|------------------|----------------------------------|----------------------------|-----------------------|
| June 25, 1973    | William Payne Bramkamp           | William Michael Davos      | Kalispell             |
| June 25, 1973    | Margaret Russ Bramkamp           | Margaret Russ Davos        | Kalispell             |
| June 25, 1973    | Maryam Bramkamp                  | Maryam Davos               | Kalispell             |
| June 25, 1973    | Sylvia Bramkamp                  | Sylvia Dvos                | Kalispell             |
| June 29, 1973    | Rose Marie Schauer               | Rose Marie Eggleston       | Troy                  |
| July 9, 1973     | Edna Adeilia Cooper              | Edie Adeilia Cooper        | Billings              |
| July 12, 1973    | Earl Richard Montgomery          | Earl Richard Baker         | Helena                |
| July 12, 1973    | Christiana Susan Dawson          | Christiana Susan Hodge     | Missoula              |
| July 12, 1973    | Lisza Michelle Dawson            | Lisza Michelle Hodge       | Missoula              |
| July 13, 1973    | John William Sawhill             | John William McKinney      | Florence              |
| July 13, 1973    | Danny Rae Sawhill                | Danny Rae McKinney         | Florence              |
| July 13, 1973    | Teresa Jane Sawhill              | Teresa Jane McKinney       | Florence              |
| July 13, 1973    | Margie Jo Sawhill                | Margie Jo McKinney         | Florence              |
| July 16, 1973    | Dean Michael White               | Dean Michael LaBlanc       | Billings              |
| July 17, 1973    | Mildred Irene Struthers          | Mildred Irene Brenna       | Livingston            |
| July 18, 1973    | John Mark Lucich                 | Marko Lucich               | Billings              |
| July 20, 1973    | Clifford Albert Cooney           | Clifford Albert Potts      | Billings              |
| July 25, 1973    | Richard Dean Kober               | Richard Dean LeClair       | Billings              |
| Aug. 1, 1973     | Tanya Lee Hankel                 | Tanya Lee Greeno           | Billings              |
| Aug. 2, 1973     | Kimberly Rae Pemberton           | Kimberly Rae LaRance       | Not Given             |
| Aug. 2, 1973     | Bonnie Jean Boe                  | Bonnie Jean Ray            | Sweet Grass Co.       |
| Aug. 2, 1973     | Rody Lee Young                   | Rody Lee Young McAndrews   | Minnesota             |
| Aug. 7, 1973     | Frances Janet Trott              | Frances Janet Palmer       | Alaska                |
| Aug. 14, 1973    | Linda Louise Morrison            | Linda Louise Moore         | Livingston            |
| Aug. 16, 1973    | Judith Elizabeth Posey           | Judith Elizabeth Birdwell  | Miles City            |
| Aug. 20, 1973    | Roland Leonard Koenig            | Roland Leonard King        | Billings              |
| Aug. 21, 1973    | Mikel Lin Pfeifer (Stevenson)    | Mikel Lin Hunt             | Helena                |
| Aug. 22, 1973    | Wendy Ruth Mielcarek             | Wendy Ruth Martin          | Billings              |
| Aug. 22, 1973    | Denise Kae Mermuys               | Denise Kae Carlson         | Billings              |
| Aug. 22, 1973    | Ann Tonette Mermuys              | Ann Tonette Carlson        | Billings              |
| Aug. 23, 1973    | Fay Bradley Shepherd             | Bradley Shepherd           | Baker                 |
| Aug. 27, 1973    | Kim Carl Cain                    | Kim Carl Cunningham        | Billings              |
| Aug. 27, 1973    | Andrew David Hellstern           | Gerald David Anderson      | Glasgow               |
| Aug. 31, 1973    | Curtis DeWayne Fisetete          | Curtis Dewayne Freeman     | Billings              |
| Sept. 4, 1973    | Michael G. Swan                  | Michael G. Sowan           | Helena                |
| Sept. 4, 1973    | Nancy A. Swan                    | Nancy A. Sowan             | Helena                |
| Sept. 4, 1973    | Carol Leigh Gardiner             | Carol Leigh Weaver         | Kalispell             |
| Sept. 4, 1973    | Daniel Arthur Jarman             | Daniel Arthur Figlear      | Glasgow AFB           |
| Sept. 4, 1973    | Vickie Patricia Jarman           | Vickie Patricia Figlear    | Glasgow AFB           |
| Sept. 6, 1973    | Loretta Jean Hughes              | Loretta Jean Cantrell      | Livingston            |
| Sept. 7, 1973    | Annalee D. Picard                | Annalee McGlothlin         | Miles City            |
| Sept. 7, 1973    | Eric Frank Edmunds               | Eric Frank Oster           | Miles City            |
| Sept. 7, 1973    | Sharyl Lynne Edmunds             | Sharyl Lynne Oster         | Miles City            |
| Sept. 7, 1973    | Alfred Clarence Stoops           | Alfred Clarence McEntire   | Hamilton              |
| Sept. 11, 1973   | Garry Dene Gibson                | Jerri Ann Gibson           | Springdale            |
| Sept. 13, 1973   | Bruce Kevin Payne                | Bruce Kevin Erlenbusch     | Cohagen               |
| Sept. 13, 1973   | Terence Kraig Payne              | Terence Kraig Erlenbusch   | Cohagen               |
| Sept. 21, 1973   | Connie Marie Lentz               | Connie Marie Perkins       | Billings              |
| Sept. 25, 1973   | Lois M. Routh                    | Lois M. Woods              | Plains                |
| Sept. 25, 1973   | Susan Kay Azzara                 | Susan Kay Flanagan         | Missoula Co.          |
| Sept. 28, 1973   | Arbon Virgil Lindell             | Virgil Henry Arvin Lindell | Billings              |
| Oct. 2, 1973     | Mark Wayne Overall               | Mark Wayne Weston          | Helena                |
| Oct. 2, 1973     | Susan Kay Carlson                | Jacqueline Susann Carlson  | Billings              |
| Oct. 2, 1973     | Terry L. Carlson                 | George Charles Carlson     | Billings              |
| Oct. 9, 1973     | Margaret Jane Stipe              | Margaret Jane Balison      | Plains                |
| Oct. 12, 1973    | Charles William Veague           | Charles William Skinner    | Butte                 |
| Oct. 12, 1973    | Linda Beth Veague                | Linda Beth Skinner         | Butte                 |
| Oct. 12, 1973    | Steven Charles Veague            | Steven Charles Skinner     | Butte                 |
| Oct. 12, 1973    | Shelley Beth Veague              | Shelley Beth Skinner       | Butte                 |
| Oct. 15, 1973    | Theodore Kleinsasser             | Theodore Waldner           | Twodot                |
| Oct. 16, 1973    | Michael Douglas Yerian           | Michael Douglas Novak      | Missoula              |
| Oct. 17, 1973    | Howard Carlson Rides at the Door | Howard Carlson Doore       | Browning              |
| Oct. 17, 1973    | Geraldine May Rides at the Door  | Geraldine May Doore        | Browning              |
| Oct. 17, 1973    | Adra Juene Rides at the Door     | Adra Juene Doore           | Browning              |
| Oct. 26, 1973    | Teresa Anne Bowick               | Teresa Anne Koepp          | Helena                |
| Oct. 26, 1973    | Anthony Richard Bowick           | Anthony Richard Koepp      | Helena                |
| Oct. 29, 1973    | Tammy Christine McMillan         | Tammy Christine Johnson    | Fergus Co.            |
| Oct. 30, 1973    | Joe Viscayno                     | Jose Vizcaino              | Helena                |
| Nov. 5, 1973     | Louise Ann Hoehl Lilien          | Louise Ann Hale            | Bozeman               |
| Nov. 5, 1973     | Inez Doreene Woods Haugan        | Inez Doreene East Haugan   | White Sulphur Springs |

# MONTANA SESSION LAWS

## CHANGES IN NAMES DECREED IN 1973

| Date of<br>Judgment | Original Name                     | Name Decreed                 | Residence       |
|---------------------|-----------------------------------|------------------------------|-----------------|
| Nov. 6, 1973        | Julie Kay Ellison                 | Julie Kay Holderman          | Sweet Grass Co. |
| Nov. 7, 1973        | Carolyn Patricia Kirkwood         | Carolyn Patricia Holler      | Billings        |
| Nov. 7, 1973        | Violet Rue                        | Violet Larsen                | Lake Co.        |
| Nov. 13, 1973       | Lawrence Strike                   | Lawrence Strike Tucker       | Blaine Co.      |
| Nov. 14, 1973       | Larry Gregory Conrad              | Gregory Morrow               | Billings        |
| Nov. 20, 1973       | Sheryl Kissler                    | Sheryl Owens                 | Harlowton       |
| Nov. 21, 1973       | Merlin Winslow Rides at the Door  | Merlin Winslow Doore         | Browning        |
| Nov. 21, 1973       | Cecile May Rides at the Door      | Cecile May Doore             | Browning        |
| Nov. 21, 1973       | Marlene Ann Rides at the Door     | Marlene Ann Doore            | Browning        |
| Nov. 21, 1973       | Dianne Marie Rides at the Door    | Dianne Marie Doore           | Browning        |
| Nov. 21, 1973       | Gayle Patrick Rides at the Door   | Gayle Patrick Doore          | Browning        |
| Nov. 21, 1973       | Martin David Rides at the Door    | Martin David Doore           | Browning        |
| Nov. 21, 1973       | Waverly Kay Rides at the Door     | Waverly Kay Doore            | Browning        |
| Nov. 21, 1973       | Merlin Rides at the Door          | Merlin Doore                 | Browning        |
| Nov. 21, 1973       | Cecil Mathew Rides at the Door    | Cecil Mathew Doore           | Browning        |
| Nov. 21, 1973       | Kenneth Michael Rides at the Door | Kenneth Michael Doore        | Browning        |
| Nov. 21, 1973       | Samuel Vernon Rides at the Door   | Samuel Vernon Doore          | Browning        |
| Nov. 21, 1973       | Sue Agnes Rides at the Door       | Sue Agnes Doore              | Browning        |
| Nov. 21, 1973       | Dorrance Horseman                 | Dorrance Black Wolf          | Hays            |
| Nov. 21, 1973       | Preston Todd Horseman             | Preston Todd Black Wolf      | Hays            |
| Nov. 21, 1973       | Cheryl Horseman                   | Cheryl Black Wolf            | Hays            |
| Nov. 21, 1973       | Lana Faye Horseman                | Lana Faye Black Wolf         | Hays            |
| Nov. 21, 1973       | Darrell Duane Horseman            | Darrell Duane Black Wolf     | Hays            |
| Nov. 21, 1973       | Georgia Horseman                  | Georgia Black Wolf           | Hays            |
| Nov. 21, 1973       | Michael James Horseman            | Michael James Black Wolf     | Hays            |
| Nov. 21, 1973       | James Dorrance Horseman           | James Dorrance Black Wolf    | Hays            |
| Nov. 27, 1973       | Ramona Tomayo Esquibel            | Celia Ramona Tomayo Esquibel | Butte           |
| Nov. 29, 1973       | John Campbell                     | John Lundy                   | Butte           |
| Nov. 29, 1973       | Cassandra Campbell                | Cassandra Lundy              | Butte           |
| Nov. 29, 1973       | Vernon Duane Fries                | Duane Vernon Hubbard         | Deer Lodge      |
| Nov. 30, 1973       | Floyd Bowen                       | Woodrow Floyd Bowen          | Libby           |
| Nov. 30, 1973       | Barbara Ann Figliomeni            | Barbara Ann Shonholz         | Billings        |
| Dec. 10, 1973       | Amy Lee Beebe                     | Amy Lee Hill                 | Columbia Falls  |
| Dec. 14, 1973       | Netha Jane Quackenbush            | Netha Jane Ward              | Helena          |
| Dec. 14, 1973       | Daniel Quackenbush                | John Daniel Ward             | Helena          |
| Dec. 14, 1973       | Brandon Ray Toalston              | Brandon Ray Kindrick         | Hill Co.        |
| Dec. 14, 1973       | Ronald Herbert Rowe               | Ronald Herbert Clark         | Billings        |
| Dec. 19, 1973       | Robert Timothy Howe               | Robert Strawn                | Anaconda        |
| Dec. 27, 1973       | Janice K. Colvin                  | Janice K. Edwards            | Miles City      |
| Dec. 28, 1973       | Gregory Lee Piety                 | Gregory Lee Hetland          | Hamilton        |



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## **NOTE:**

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